

**AGREEMENT BETWEEN THE CITY OF MIAMI BEACH, FLORIDA  
AND  
PROFESSIONAL COURSE MANAGEMENT II, LTD.  
FOR  
OPERATION AND MANAGEMENT OF THE MIAMI BEACH GOLF CLUB**

THIS AGREEMENT made and entered into as of this 15 day of OCTOBER, 2003, by and between the CITY OF MIAMI BEACH, FLORIDA, a municipal corporation having its address at 1700 Convention Center Drive, Miami Beach, Florida (hereinafter "City"), and PROFESSIONAL COURSE MANAGEMENT II, LTD., a Florida limited partnership having its principal address at 10000 Biscayne Boulevard, Miami Shores, Florida, 33138 (hereinafter "Manager").

WHEREAS, the City is responsible for the operation of its golf courses for the use and benefit of the public; and

WHEREAS, City desires to continue providing professional golf services for the convenience and enjoyment of the public;

WHEREAS, City desires a professional Manager capable of assuming the complete operation of the Miami Beach Golf Club and all related facilities; and

WHEREAS, Manager is engaged in professional golf management services business and is prepared, equipped and qualified to undertake such operations, and provide all services required hereunder at the Miami Beach Golf Club; and

WHEREAS, said Manager must also be capable of providing an accounting to City of all receipts and disbursements and of maintenance of the facilities and equipment, all in accordance with provisions of this Agreement as negotiated by said Manager and City; and

WHEREAS, said professional Manager is needed to provide for maintenance of the Miami Beach Golf Club and all related facilities and equipment at a service level as outlined hereunder in Exhibit B; and

WHEREAS, City has requested proposals from persons qualified to provide the services of a professional Manager and operator; and

WHEREAS, Manager assures City that it has developed expertise with respect to successful and efficient management and operation of golf facilities on or off of comparable sites and has inspected Miami Beach Golf Club and related facilities.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and conditions herein contained, the parties hereto agree as follows:

The City hereby grants to Manager, and Manager hereby accepts from the City, the exclusive right to operate and manage the Miami Beach Golf Club (hereinafter, referred to as the "Golf Course," the "Premises", and/or the "Golf Course and related facilities"), in conformance

with the purposes and for the period stated herein, and subject to all the terms and conditions herein contained.

## **ARTICLE 1** **DEFINITIONS**

As used herein, the following words and phrases shall have the meanings set forth below:

**1.01    Director:**

"Director" means the City's Parks and Recreation Director of the City, and any of his authorized representatives.

**1.02    Business Year:**

Business Year means the City's fiscal year, commencing October 1 and ending September 30.

**1.03    Golf Course/Premises and/or Golf Course and related facilities:**

"Golf Course," "Premises" and/or "Golf Course and related facilities" means any area where Manager's activities are carried out with regard to this Agreement. This shall include, but not be limited to, buildings, non-building improvements, landscaping and equipment on the property designated as the Miami Beach Golf Club, as generally depicted on the site map which is part of Exhibit A, attached hereto. Should Manager and City disagree regarding whether a particular site and/or item shall be considered part of the Golf Course, Premises, and/or Golf Course and related facilities, the Director's decision shall prevail.

**1.04    Auditor:**

Member(s) of accounting staff or professionally qualified consultant employed by the City to conduct an audit.

**1.05    Operating Expenses**

Operating Expenses are all costs and expenses necessary to the operation of the Golf Course and related facilities in the ordinary course of business as approved by City in City's annual budget, to include the following: the cost and fees of the Auditor; insurance; utilities; any Management Fee as provided in Article 11 and other costs set forth in the Operating Budget. Operating Expenses shall be determined in accordance with generally accepted accounting principles consistently applied.

**1.06    Operating Revenues:**

"Operating Revenues" means any and all gross revenues of every kind or return, whether made or provided upon the basis of cash payments or on credit (whether collected or not), derived from sales and services made or provided for the City in connection with

Manager's operating, maintaining and promoting the Golf Course and related facilities including, without limitation, the five percent (5%) of gross revenues for food and beverage and pro shop sales, to be paid pursuant to the Concession Agreement between City and Manager, (as Concessionaire), attached and incorporated as Exhibit "C" hereto; provided, however, there shall be excluded or deducted, as the case may be, from gross revenues the following:

A. All sales taxes, and retailers' excise taxes, paid or collected by or payable by Manager, but only if such taxes are added to the selling price and separately stated from the selling price of merchandise or services, and collected from customers.

B. All bona fide credits or refunds made by Manager to customers in regard to merchandise sold or services provided by Manager.

C. All sums or credits received in settlement of claims for loss or damage to merchandise and assets.

**1.07 Operating Surplus:**

Operating Revenues less operating expenses and cost of goods sold and management fees as set forth in the annual operating budget, and other authorized expenditures other than the Manager's expenses.

**1.08 Operations:**

The business and commercial operations and affairs in the ordinary courses of business of the Golf Course and related facilities.

**1.09 Operating Budget:**

Operating Budget is a schedule of all anticipated revenues and all estimated expenses for operations at the Miami Beach Golf Club for each City fiscal year period, beginning October 1 and ending September 30, as developed by Manager and formally approved by City.

**1.10 Facility Capital Improvement:**

Any construction project which extends the useful life and/or increases the capacity of the Golf Course and related facilities. For purposes of this Agreement, weeding and replacement or renovation of sod or grass shall not be considered a capital improvement.

**1.11 Term Clarification:**

In the event of any conflict in the definition or interpretation of any word, responsibility, service or schedule between this Agreement and the exhibits attached hereto, said conflict or inconsistency shall be resolved by giving precedence in the following order: first to the Agreement; then to the Exhibits to the Agreement.

**ARTICLE 2**  
**Miami Beach Golf Club/Premises**

**2.01 Golf Course Ownership and Name**

The Golf Course consists of lands owned in fee by City. The name of the Golf Course shall remain the same unless changed by City.

**2.02 Use of Golf Course**

The Premises, as shown on the site map which is attached as Exhibit "A", shall be used only and exclusively for golf course operations and for such other, related purposes for which express approval is granted by the Director, and for no other purpose whatsoever.

**2.03 Manager's Acceptance of Physical Condition**

The Manager herein accepts the Golf Course and related facilities in its present "as is" physical condition as of the date of execution of this Agreement by the parties hereto, and agrees to make no demand upon City for any improvements or alteration thereof. When the remainder of the proposed Golf Course renovations, including but not limited to the clubhouse, equipment maintenance facility, restrooms, and cart barn are completed, the Manager herein agrees that it shall accept same in its "as is" condition, and agrees to make no demand upon City for any improvements or alteration thereof.

**2.04 Approval Required for Alterations**

Any improvements, additions, alterations or changes to the Golf Course and related facilities shall be subject to prior written approval by the Director, securing of applicable permits, and compliance with such terms and conditions as may be imposed thereon by City.

**2.05 No Property Interest of Manager**

Manager hereby acknowledges the title of City in and to the Golf Course and related facilities, and covenants and agrees never to assail, contest or resist said title, nor to assert with respect thereto any property interest of Manager.

**2.06 Ownership of Improvements**

Ownership of all existing structures, and of all structures, buildings and/or improvements constructed by City or by Manager upon the Golf Course, and all alterations, additions or betterments thereto, shall immediately vest and be vested in City at all times during and after the term hereof. City shall retain at all times the right to possession of such structures, buildings and/or improvements.

**ARTICLE 3**  
**General Scope of Services**

3.01 Subject to the terms of this Agreement, Manager shall have the exclusive right, license, privilege, and duty to operate, manage, maintain, and promote the Golf Course and related facilities in a manner consistent with the City's policies and procedures and the operations of other similar first-class facilities. The scope of services required of the Manager under the terms of this Agreement shall include but not be limited to:

3.01.1 Overall Golf Course management in accordance with City golf policy.

- a. Pro shop operations (as shall be provided pursuant to the Concession Agreement in Exhibit "C")
- b. Starter services
- c. Tee-time reservations
- d. Marshaling Services
- e. Cart rentals and operations
- f. Driving range operations
- g. Food and beverage service (as shall be provided pursuant to the Concession Agreement in Exhibit "C")
- h. Grounds/buildings and equipment maintenance to City's specifications and manufacturers' specifications.
- i. Clubhouse maintenance and operation
- j. Development of golf training programs
- k. Booking of national and international golf tournaments
- l. Securing, execution and monitoring of agreements with Miami Beach hotels for use of the golf course, if approved by the City.

3.01.2 Collection and accounting of all revenues.

3.01.3 Payment and accounting of all expenses in a timely manner.

3.01.4 Formulation and implementation of operating programs, business plans, and budgets.

3.01.5 Handling of Golf Course and related facilities' personnel including employment, training, and terminations.

3.01.6 Preparation of monthly and annual financial operating statements.

3.01.7 Maintain the Golf Course buildings, equipment, utilities, and all appurtenances in conformity with City's specifications and manufacturers' specifications.

3.01.8 Plan and carry out advertising and marketing program for the Golf Course and related facilities.

3.01.9 Attend to all other matters necessary or expedient for the efficient performance of the Golf Course's operations, including community meetings and Golf Advisory Board meetings.

3.01.10 Provide an annual inventory of all City owned and/or provided equipment, property and merchandise at the Golf Course and related facilities.

3.02 Manager shall have the right of first refusal to provide such optional services, if any, as may from time to time be requested by the Director.

3.03 After commencement of operations pursuant to this Agreement, Manager shall operate the Golf Course every day, including Sundays and holidays, and during such hours as are specified by the Director. Closure is permitted only with the prior approval of the Director, except for inclement weather in which case the Manager, in his reasonable discretion, shall determine closure, and such closure shall be further subject to Section 6.10.2.

3.04 Manager shall conduct no other operations or activities upon the Golf Course and related facilities other than those set forth in this Article 3 of this Agreement.

#### **ARTICLE 4** **City's Responsibilities**

4.01 City shall perform the following:

- a. Administer all terms and conditions of this Agreement;
- b. Monitor standards and specifications;
- c. Review and approve Golf Course Operating Budget pursuant to Section 12.3 herein;
- d. Review and approve or disapprove, in advance, and within five (5) Business days from receipt of written notice from Manager, any and all expenses not previously budgeted;
- e. Review and approve or disapprove, in advance, any alterations to existing facilities;
- f. Provide or make provision for all equipment needed to operate Golf Course;
- g. Set all fees; and
- h. Determine, fund and implement capital improvements.

#### **ARTICLE 5** **Management Term and Renewal Term**

5.01 The initial term of this Agreement shall be for a period of three (3) years, commencing on October 1, 2003, and expiring at midnight on September 30, 2006, unless earlier terminated pursuant to the provisions of this Agreement.

5.02 The City shall have the right, at its sole option and discretion, to extend this Agreement for two (2) successive one (1) year terms (each a "Renewal Term"), by giving written notice to Manager of such intention not less than ninety (90) days prior to the expiration of the initial term or an exercised Renewal Term.

5.03 It is intended by the parties that the term of the Concession Agreement, attached as Exhibit "C" hereto, shall run concomitantly with this Operation and Management Agreement. A termination and/or expiration of this Operation and Management Agreement shall also result in the automatic termination of the Concession Agreement.

## **ARTICLE 6**

### **General Management of Golf Courses**

6.01 Manager recognizes that its operation hereunder is a service to users of the Golf Course and the public. Manager shall conduct its operations in a first-class, efficient, courteous, and professional manner. Manager shall have the right to make reasonable objections to the quantity and character of articles sold and services offered to the public, the prices charged, the appearance and condition of the Golf Course and related facilities, and employees utilized by Manager for its operations. Manager shall promptly discontinue or remedy any such objectionable practice upon notification by the Director.

6.02 Manager shall operate and manage the Golf Course and related facilities (including but not limited to, the pro shop, clubhouse, and food and beverage operations and facilities, which will be operated, managed, and maintained as provided in the Concession Agreement, attached as Exhibit "C" hereto), in a first class manner, comparable to other first-class operations providing similar facilities and services in the area. For purposes of this Agreement, the term "first class operations" shall be defined as the operating standards of the Doral, Turnberry and Diplomat golf courses and related facilities.

#### **6.03 Golf Professional Services – General**

6.03.1 Manager shall provide all Golf Course management and operations, including, but not limited to, the following: sell, rent, store and/or repair golf equipment; sell golf clothing and supplies; provide instructional services in the playing of golf; rent golf carts, and operate a driving range, all in accordance with this Agreement, City of Miami Beach Request for Proposals No. 125-99/00, and Manager's response thereto.

#### **6.04 Equipment Rental**

Manager shall provide and maintain for rental an adequate and reasonable inventory of golf equipment, as is deemed necessary by Director to adequately meet the public's need therefor.

#### **6.05 Equipment Repair**

Manager shall furnish and maintain proper facilities, equipment and devices

for the repair of all types of golf equipment and shall make available to the public such repair services.

#### 6.06 **Lessons**

Manager shall provide a full range of golf instruction including, but not limited to, beginners to advanced, individual and group, and all age groups. Manager shall conduct at least three junior golf programs each year.

#### 6.07 **Cart Rental**

607.1 Manager shall provide and maintain for rental an adequate number of manually-operated golf carts, if necessary, in the sole opinion of the Director, to reasonably meet the demands of the public patronizing the Golf Course.

6.07.2 Manager shall provide and maintain a minimum of seventy-five (75) power-driven carts and shall increase the number of carts provided if necessary, in the sole opinion of the Director, to reasonably meet the demands of the public patronizing the Golf Course. All of the seventy-five (75) required power-driven carts shall have shade tops, bag covers, GPS, divot replacement sand and trap rakes. The fleet shall be properly maintained in a clean and fully functional condition.

#### 6.08 **Driving Range**

6.08.1 Manager shall be responsible for the operation of the driving range and responsible for providing and maintaining a sufficient number of driving range mats.

6.08.2 Manager shall also be responsible for providing maintenance of and any necessary damage repairs to the driving range facilities, in accordance with standards and specifications contained in Exhibit B hereto.

#### 6.09 **Starter Services**

6.09.1 Manager shall provide complete Golf Course starter services, as deemed appropriate by the Director, including but not limited to controlling starting times, taking reservations for tee times, scheduling tournaments, and collecting green fees and all other applicable golf courses fees.

6.09.2 Manager shall operate all equipment and provide supplies necessary for the operation of the starter system, including but not limited to: player scorecards; a cash register which shall issue a receipt and keep a permanent record for each sale and business transaction; an automated telephone tee-time reservation system for utilization at the Golf Course; telephones, wiring and all equipment necessary for the operation of the automated reservation system at Miami Beach Golf Club; and a computer system which shall be used to transfer to the Department on a daily basis attendance, sales and accounting records in a detail and format as requested by the Director.

6.09.3 Manager shall operate and maintain a hotel guest reservation scheduling service and a tournament scheduling services, as deemed appropriate by the Director, including but not limited to reserving tournament dates, processing reservation agreements, arranging for tournament assistance, collecting green fees and other fees associated with tournament play, and supplying services. Manager shall provide Director, monthly with a complete list of all proposed tournaments.

6.09.4 Manager shall honor all contracts for tournaments and banquets as shall be scheduled and approved by City. Any such events shall be coordinated and scheduled with Manager so as to not conflict with tournaments scheduled by Manager pursuant to Section 6.09.3 above, and so as to minimize disruption to the golf course concession operations.

6.09.5 Manager shall be fully responsible for the collection of all green fees, reservation fees, and other monies associated with the operation of the starter system. Manager shall be solely responsible for depositing fees collected in the bank account established pursuant to Section 12.5, and shall also maintain account reconciliations and bookkeeping related to the fee revenues. Manager shall account for and deliver to the City all such monies due to City in accordance with provisions contained within this Agreement.

6.09.6 Manager shall keep complete records of account with regard to all monies collected hereunder. Manager shall also be responsible for and shall keep neat, readable starting sheets. Manager shall, throughout the term of this agreement, comply with Director's policy statement(s) regarding the collection of all fees, reporting requirements for fees collected, and the system of accountability and procedures therefor. All accounting records and starting sheets shall at all times be completely available for examination by the Director, the City's Chief Financial Officer or other authorized representative.

#### **6.10 Days and Hours of Operation**

6.10.1 Manager shall keep the starter's office open every day, including Sundays and holidays. The minimum hours of operation shall be from dawn to dusk, with the exception of closures required by weather conditions. Any changes in the days and hours for operation heretofore prescribed shall be subject to the prior approval of the Director.

6.10.2 In regard to the Golf Course being out of operation, whenever play must be temporarily suspended on the Golf Course due to inclement weather conditions, the decision on when to allow play to resume, and when to allow golf carts to go out on the courses, will be made by Manager.

#### **6.11 Starter Service Supplies/Equipment**

Manager shall provide all necessary golf starter sheets, golf pencils and an adequate number of accurate and attractive, color golf scorecards, as approved by City. All of the aforementioned items shall be in form and content acceptable to the Director.

#### 6.12 **Fees**

Manager shall charge and collect all Golf Course fees and charges according to a fee schedule approved by the Mayor and the City Commission. City reserves the right to keep or to change the fee schedule, in its sole discretion.

#### 6.13 **Pro Shop**

6.13.1 Manager shall operate, stock, staff and maintain the Pro Shop pursuant to the terms and conditions of the Concession Agreement between City and Manager, (acting as Concessionaire), attached hereto and incorporated herein as Exhibit "C".

#### 6.14 **Golf Professional**

A "Class A: P.G.A. Professional" shall be on site at the Golf Course full-time and shall provide lessons and perform all other similar and customary services for same at similar establishments in the South Florida area. The playing of the game of golf shall be taught only by qualified instructors whose qualifications have been approved in writing by the Director.

#### 6.15 **Golf Course Marshal Service**

Manager shall provide Golf Course Marshal Services. Manager shall submit for the Director's approval a schedule setting forth hours of operation for course marshaling. Any curtailment or decrease of this service is subject to the prior written approval of the Director.

#### 6.16 **Minimum Grounds Maintenance Service**

6.16.1 Manager shall provide grounds maintenance services, including at a minimum, but not limited to, the obligations to mow, edge, trim, overseed, fertilize, aerate, irrigate, sod, change cups, service tees, top dress, repair divots, rake traps, spray, mop, spot irrigate, syringe, and renovate turf and shrub areas designated hereunder, as well as to provide weed, disease and pest control, tree maintenance, maintenance of irrigation system including mainlines, pumps, boosters and controllers, keep swales and drain lines in good repair and to provide the necessary maintenance of any appurtenant structures and equipment. A summary of minimum maintenance standards is attached as Exhibit B, and the Manager is required to maintain the Golf Course and related facilities at this level of quality or better. In addition, the Manager shall maintain all equipment, utilities, and related structures in good working condition in accordance with City standards and manufacturers' recommendations.

6.16.2 Manager shall provide a Class A GCSAA (Golf Course Superintendents Association of America) Superintendent at the Golf Course on a full time basis.

## **6.17 Food and Beverage Services**

### **6.17.1 Sale of Food and Beverages**

Manager shall provide for the sale of food and beverages, including beer, wine and alcoholic beverages, and catering services for tournaments, events or groups utilizing the Golf Course and related facilities, in accordance with the terms and conditions of the Concession Agreement between City and Manager, (acting as Concessionaire), attached hereto and incorporated herein as Exhibit "C". All food and beverage operations and services shall be of first-class quality and provided in a first-class manner, comparable to other first-class operations providing similar services in the area. For purposes of this Agreement, the term "first class operations" shall be defined as the operating standards of the Doral, Turnberry and Diplomat golf courses and related facilities.

### **6.17.2 Days and Hours of Operation**

6.17.2.1 Manager shall open the restaurant for business in accordance with the days and hours of operation established pursuant to Section 6.10, each and every day and shall close the restaurant no sooner than thirty (30) minutes after the last golfer has finished play. The restaurant operations may be modified to extend the closing hour as determined to be in the best interest of the City and Manager, (acting as Concessionaire).

6.17.2.2 Manager shall submit for the Director's approval a schedule setting forth hours of operation for on-course and restaurant food and beverage services. Any curtailment or decrease of this service is subject to the prior written approval of the Director.

6.17.2.3 The days and hours of operation set forth in this Section 6.17.2 shall be complied with unless advance written authorization to deviate from this schedule has been obtained from the Director.

### **6.17.3 Alcoholic Beverages License**

Manager shall meet all requirements for appropriate on-sale licenses from the Florida Department of Alcoholic Beverage Control. Manager shall be solely responsible for the payment of all costs and expenses required to complete the transfer of such licenses at the Golf Course and related facilities to Manager and to maintain such license for the duration of the term of this Agreement.

## **6.18 Golf Course Promotion/Advertising and Promotional Materials**

6.18.1 Manager agrees to advertise and promote the Golf Course and related facilities to foster a favorable business environment, stimulate patronage, and support City efforts to maximize use of the Golf Course and related facilities, and promote and advertise the Golf Course and related facilities as a first-class facility and tourist destination in the City of Miami Beach.

6.18.2 Manager shall, as a part of this Agreement, work with the Director, City officials and/or designated City boards, agencies, and committees, golf organizations, the Miami Beach Chamber of Commerce, the Greater Miami Convention and Visitor's Bureau (GMCVB), travel and golf magazines and tournament promoters in promoting golf in the City and the Golf Course. Manager shall also develop and maintain an Internet web page promoting the Golf Course, listing amenities etc. This web page is subject to the approval of the City.

6.18.3 Manager shall use its best efforts to develop and maintain cooperative working relationships with the aforesaid persons and other interested organizations in order to provide the best programs and services possible for the public.

6.18.4 Manager shall not promulgate nor cause to be distributed any advertising or promotional materials unless prior approval thereof is obtained from Director. Said approval shall not be unreasonably withheld or delayed and shall be deemed to be given if no objection is made within fifteen (15) days following the Director's receipt of the request for approval. Such materials include, but are not limited to, advertising in newspapers, magazines and trade journals, and radio and/or television commercials.

6.18.5 Any advertising or promotional materials promulgated by Manager which contain the words "Miami Beach Golf Club," or any derivative thereof, shall also include the City of Miami Beach logo or other reference to the Golf Course and related facilities as a City of Miami Beach facility, as specifically approved by the Director.

#### **6.19 Optional Services**

Manager shall have the right of first refusal to provide such optional services, if any, as may from time to time be requested by the Director. The need, demand, nature and extent of such optional service shall be determined by the Director, at his sole discretion. If, in the sole opinion of the Director, it is appropriate and in the best interests of the City to offer the right of first refusal for a particular service to some other person or firm, such decision shall not be contested. Should Manager decline to provide any such service upon request by the Director, Manager acknowledges that the Director will proceed to make such other arrangements therefor as deemed by the Director to be appropriate, and Manager shall make no claim no assertion of any further right or entitlement with respect to such matters.

### **ARTICLE 7**

#### **Golf Courses and Related Facilities Equipment and Improvements**

7.01 Manager accepts the Golf Course and related facilities in their **as-is** condition existing as of the commencement of the initial term of this Agreement. City shall equip, and Manager shall maintain, the Golf Course and related facilities with all such appliances and equipment as may be necessary to Manager's operations hereunder. Any equipment proposed to be installed or otherwise provided by Manager, as approved in the Operating Budget, shall be subject to the prior inspection and approval of the Director.

7.02 Any equipment used by Manager shall be taken "as is," inventoried, repaired or renovated, if necessary, and returned to City at the end of the term hereof.

7.03 Manager shall make no refurbishment or alterations to the Golf Course and related facilities, whether in whole or in part, nor construct additional improvements upon the said Premises, without the prior written approval of the Director. Title to such improvements shall immediately vest and be vested in City at all times during and after the term hereof.

7.04 Manager hereby acknowledges the title of City in and to the Golf Course and related facilities, and covenants and agrees never to assail, contest or resist said title, nor to assert with respect thereto any property interest of Manager.

7.05 Upon expiration or earlier termination of this Agreement, Manager shall surrender the Golf Course and related facilities to the City in a good state of repair, reasonable wear and tear excepted. Manager shall restore and repair any damage to the Golf Course and related facilities, which the Director, in his reasonable discretion, determines has been caused by Manager's negligence or failure to maintain, as necessary, to the satisfaction of the Director. Manager shall be solely responsible for any damage caused by any risk which Manager is required to insure against pursuant to Article 20.

## **ARTICLE 8**

### **Maintenance and Repair**

**[Note: For purposes of this Article 8 only, the term Golf Course and related facilities shall also be deemed to include the Par 3 Golf Course]**

8.01 Manager shall be solely responsible for the safety and all maintenance and repair of the Golf Course and related facilities, and all equipment, furniture and fixtures thereon, in conformance with and at a minimum service level as outlined in Exhibit B, attached hereto.

8.02 Manager shall provide and maintain in its employ a Golf Course superintendent and maintenance crew during normal working hours, as determined by the Director. All of Manager's maintenance personnel shall be supervised by a Class "A" GCSAA (Golf Course Superintendents Association of America) Superintendent. Manager must employ sufficient personnel to perform all work as scheduled and required by City. All personnel shall be clean and neat at all times and wear appropriate uniforms as approved by the Director.

8.03 In regard to emergency services, Manager will provide Director with the names and telephone numbers of at least two (2) qualified persons who can be called by City representatives when emergency maintenance conditions occur during hours when Manager's normal work force is not present. City shall call for such assistance only in the event of a genuine and substantial emergency.

8.04 City shall furnish, and Manager shall maintain, all necessary equipment, supplies and material of good quality and in sufficient number to fulfill the requirements of this Agreement and to accomplish an acceptable and professional level of maintenance. Director

shall confer with Manager as to approval of the type of each supply, material, or equipment, supplies and materials shall include, but not be limited to:

8.04.1 All golf course(s) maintenance equipment including but not limited to tractors, fairway mowers, greens mowers, tree trimming trucks, etc., as deemed necessary by the Director, in his sole discretion;

8.04.2 All necessary gas, oil, and spare parts for all equipment;

8.04.3 All necessary seed, fertilizers, fungicides, insecticides, herbicides, and for greens;

8.04.4 Parts necessary for the repair and maintenance of all irrigation systems, and appurtenant equipment;

8.04.5 Tee towels, soap, ball washers, putting green cups and flags, benches, trap rakes, tee markers, tee mats, trash receptacles, trash receptacle liners, cleat brushes, and all other pertinent golf course equipment;

8.04.6 Materials for the installation and maintenance of drains;

8.04.7 Sand for all greens traps and an acceptable substitute for fairway traps on an as-needed basis as determined by the Director.

8.05 Manager shall maintain and-operate the Premises in a clean, safe, wholesome, and sanitary condition, free of trash, garbage, or obstructions of any kind, and in compliance with any and all applicable present and future laws, general rules and regulations of any governmental authority in force now or at anytime during the term of this Agreement relating to sanitation, public health, safety, or welfare.

8.06 Manager shall perform acceptable day-to-day housekeeping and maintain and perform all repairs on the Golf Course and related facilities, except for those repairs which, upon prior written notice from Manager of the necessity for same, Director, in his sole discretion, specifically agrees to undertake on behalf of the City. All such maintenance, repairs and replacements shall be of quality equal to or better than the original in materials and workmanship.

8.07 Manager shall remedy without delay any defective, dangerous, or unsanitary conditions. Manager shall initiate the appropriate actions necessary to correct such situation within the same operational day the unacceptable condition is identified.

8.08 The Director may, at any time, without notice, enter upon the Golf Course, to determine if repairs, housekeeping and maintenance satisfactory to City are being performed.

8.09 Regularly scheduled inspections of the Premises and Manager's operations authorized herein shall be made by City. The written report of such inspections shall be recorded, retained for reference, and forwarded to Manager upon request.

8.10 The Manager or his representative shall meet with the Director or his representative once every four (4) weeks and at such other times as may be required by City to Manager's performance under this Agreement and to discuss any problems or other matters as determined by City.

8.11 Manager shall supervise janitorial service, including window washing and refuse containers, and shall keep the Premises used and occupied by it in a neat, clean, and sanitary condition at all times. Manager shall be responsible for cleaning and maintaining all public restrooms in the clubhouse and on the golf course. Restroom maintenance will consist of one complete and thorough cleaning prior to opening each day and a restroom inspection every three (3) hours minimum, with restroom supply restocking and necessary cleaning performed as needed.

8.12 Manager shall maintain designated areas of the driving range, in accordance with provisions listed in Section 6.08 of this Agreement.

8.13 **Garbage and Utilities**

8.13.1 Manager shall provide a complete and proper arrangement for the adequate sanitary handling and disposal away from the Golf Course and all related facilities of all trash, dry and wet garbage, and other refuse resulting from, or in any way associated with the use of the Premises.

8.13.2 To the extent feasible and practical, the Manager shall establish and implement a program for the recycling of waste materials accumulated upon the Premises, to include food and beverage concession materials and landscape debris.

8.14 Should Manager fail, after ten (10) days' notice from City of the need thereof, to perform its obligations required pursuant to this Article 8, City may, but shall not be obligated to, (in addition to all other available remedies) exercise its right to terminate this Agreement as provided hereinafter and enter upon the Premises and perform Manager's said failed obligations, using any equipment or materials on the Premises suitable for such purposes; provided however, that in the event that the default is not reasonably susceptible to being cured within such ten (10) day period, Manager shall not be considered in default if it shall, within such period, commenced with due diligence and dispatch to cure, and thereafter completes with dispatch and due diligence the curing of such default but in no event shall such extended cure period exceed ninety (90) days from the date of the initial written notice thereof.

**ARTICLE 9 [intentionally deleted]**

**ARTICLE 10**  
**Manager's Personnel**

10.1 Manager's activities and operations at the Golf Course and related facilities shall be supervised by one or more active, qualified, competent, and experienced employee(s) of Manager. A general manager shall be on site full time during the Golf Course hours of operations. Manager may designate either the P.G.A. Class-A Professional or the Class-A Superintendent as duly authorized to act for Manager in all aspects of its day-to-day operations. Manager shall notify Director when Manager is absent, and who shall act in Manager's absence.

10.2 Manager's personnel shall at all times while on duty at the Golf Course and related facilities be clean and neatly groomed, courteous, efficient, and attired in a suitable uniform as approved by the Director. Manager's personnel shall perform its operations authorized hereunder in a businesslike manner, without rudeness or discourtesy to any person, or use of profanity. All personnel shall have a clear understanding of the established service levels and at minimum comply with them. All personnel shall participate in and completed a customer services training program and offer the highest level of customer service. This customer service will be stressed by the Manager at all times. Manager's personnel shall be subject to drug testing, background checks and other related pre-employment standards deemed appropriate by the City.

10.3 Manager shall at all times maintain a high standard of services to the public, to the satisfaction of the Director who shall be the sole judge of the adequacy thereof. Upon written notice by the Director that the conduct of any of Manager's personnel at the Golf Course and related facilities is detrimental to the best interests of the public, or to City, Manager shall, within twenty-four (24) hours thereafter, furnish evidence satisfactory to the Director of correction of such deficiency.

**10.4 Staffing and Hours of Operation**

10.4.1 Subject to the approved annual operating budget, Manager shall staff its operation with personnel to conduct all operations authorized hereunder, in sufficient number to meet public demand for prompt, courteous, and efficient service.

10.4.2 Manager shall adjust the number of its assigned personnel, or its hours of operation, as may be requested from time to time by the Director.

**10.5 Notice of Personnel: Changes**

Manager shall, in writing, inform the Director of the full name and specific assignment of each of its personnel used in performance of this Agreement. Manager shall thereafter notify the Director, in writing, within forty-eight (48) hours following any such personnel changes.

**ARTICLE 11**  
**Management Fee and Incentive Fee**

**11.1 Manager's Compensation**

11.1.1 As consideration to Manager for providing the services herein specified during the initial term and any Renewal Term, the City shall pay Manager during the initial term and Renewal Term, if any, the amounts described in (a) below.

(a) The annual management fee for the performance of the services hereunder with respect to the Fiscal Year for the first year of the initial management term shall be \$137,500 (the "Management Fee"), which Management Fee shall be adjusted as follows:

- (i) Year 2 - \$125,000;
- (ii) Year 3 - \$125,000;
- (iii) Renewal Term Year 1 - \$125,000;
- (iv) Renewal Term Year 2 - \$125,000.

11.1.2 The Management Fee shall be payable in equal monthly installments due on or before the last day of each month during the Fiscal Year, and Manager shall be entitled to draw such amounts from the account described in Section 12.5.

**11.2 Incentive Fee**

11.2.1 **Amount.** In addition to the Management Fee, Manager shall be entitled to, and shall receive from the City, an annual incentive fee with respect to each Fiscal Year during the initial term and Renewal Term, if any, as follows:

The Manager will be paid the annual incentive fee for the first Fiscal Year (10/1/03 to 9/30/04) of 9% of all gross revenues over \$1,875,000, derived from the Golf Course and related facilities operation. The incentive fee shall increase to 10% for the second Fiscal Year of operations, and 10% for the third Fiscal Year, and each Renewal Term, if any. Gross revenues shall not include gross revenues received by Manager as a concessionaire for the food and beverage and pro shop facility (merchandise). Gross revenues will include the 5% concession fee paid by Manager to the City for the use of the latter facilities.

Manager's annual incentive fee will be earned in full provided the "net operating income before debt service" as shown on the approved annual operating budget equals or exceeds \$800,000 per year. Should the "net operating income before debt service" be less than \$800,000, Manager's annual incentive fee shall be reduced proportionately. By example, if the net operating income before debt service is \$720,000 (10% less) then Manager's annual incentive fee shall be reduced by 10%.

In arriving at "net operating income before debt service," there shall be deducted from Golf Course and related facilities gross revenues the ordinary operating expenses as set forth in the annual operating budget approved by the City. Extraordinary operating expenses and/or non-budgeted capital improvements shall not be deducted from gross revenues in determining "net

operating income before debt service.” Such extraordinary operating expenses or unbudgeted capital improvements shall include but not be limited to the following:

Real estate taxes on the Golf Course and related facilities, if imposed during the term of this Agreement; damage caused by Force Majeure, as defined in Section 29.5; capital improvements required by the City beyond that which is budgeted; and additional costs related to promotional events including major tournaments that may be approved by the City beyond that which is budgeted.

Extraordinary non-budgeted expenses shall include extra security services, modular rentals, capital (computers, telephones, F.F.E.), temporary portable restroom and cart barn rentals, City Property Management division and City Public Works division expenses related to the removal of the cart barn and modular buildings and site restoration thereof, water bills resulting from a lack of salt water pump station, Par Three Golf Course maintenance, streetscape maintenance, and Manager’s annual incentive fee.

**11.2.2 Payment.** The annual incentive fee determined pursuant to Section 11.2.1 above shall be payable to Manager within forty-five (45) days of the end of a Fiscal Year. Manager will thereupon be entitled to deduct the amount of such fee from the account described in Section 12.3.7, provided that to the extent that Manager projects that such a deduction would leave insufficient funds in such account to cover Operating Expenses for the remainder of the then-current fiscal year, Manager shall be entitled not to deduct all or a portion of such fee from such account, and, upon notice thereof from Manager, the City shall promptly pay Manager the amount of the fee that has not been deducted from such account.

## **ARTICLE 12**

### **Funding; Budgets; Bank Accounts**

#### **12.1 Operating Funds.**

Subject to Section 12.2, following the approval of the annual operating budget for a Fiscal Year (including, without limitation, any annual operating budget applicable to the first Fiscal Year during the term hereof), the City shall make available to Manager all funds necessary to pay all Operating Expenses incurred or accrued in such Fiscal Year. Such funds shall be deposited by Manager in the operating account established pursuant to Section 12.5 and used to pay Operating Expenses.

#### **12.2 Non-Funding**

12.2.1 The City shall have no obligation to provide funds for the payment of Operating Expenses incurred or committed for, beyond the approved annual Operating Budget, after the date Manager receives written notice (an “Appropriation Deficiency Notice”) of the fact that insufficient funds or no funds have been appropriated for the Golf Course and related facilities.

12.2.2 If the Appropriation Deficiency notice is of insufficient funds, the City shall pay all Operating Expenses incurred or committed for after such date which are within the aggregate level of appropriated funds in the approved annual Operating Budget. The City shall pay all Operating Expenses incurred or committed for that are within the aggregate level of funds in the approved annual Operating Budget, prior to the date Manager receives the Appropriation Deficiency Notice. Any failure by the City to provide funds (beyond the aggregate level of appropriated funds in the annual Operating Budget) for the payment of Operating Expenses incurred or committed for after Manager receives an Appropriation Deficiency Notice shall not be a breach of or default under this Agreement by the City.

### **12.3 Annual Budget; Cash Flow Budget**

12.3.1 During the City's annual budget and review process of each year, Manager will prepare an annual operating budget for the next Fiscal Year to meet the scope of services and objectives under this Agreement. Such budget shall contain appropriate line items for revenues and expenses and the projected net operating deficit or surplus.

12.3.2 The Mayor and City Commission, each year during the term hereof, shall review and approve annual budget for the succeeding Fiscal Year in the course of the City's annual budget review process.

12.3.3 The annual budget referred to in Sections 12.3.1 and 12.3.2 above shall be reviewed and is subject to approval by the City Manager and the Mayor and the City Commission. The City Manager and the Mayor and the City Commission shall notify Manager of any changes to the annual operating budget for the succeeding Fiscal Year proposed by Manager and with such changes, if any, as are made by the City, such budgets shall be the Approved Budgets for the following Fiscal Year.

12.3.4 On or prior to the commencement date hereof, Manager has given its comments and observations on the preliminary annual operating budget for the first Fiscal Year hereof prepared by the City. Manager has submitted to the City Manager and the Mayor and the City Commission its proposed annual operating budget for the first Fiscal Year hereof; such proposed budget shall be treated in the same manner and create the same rights as obtained following the submission of annual budgets as described in Section 12.3.3 above, provided that the City shall notify Manager of any changes to such annual budget.

### **12.4 Budget Modifications Initiated by the City.**

In the event that it appears reasonably likely, in any year during the term hereof, that the actual Net Operating Loss/Profit for such Fiscal Year will be larger than projected in the annual operating budget for such Fiscal Year, the City Manager and/or the Mayor and the City Commission may request from Manager a plan for reduction of Operating Expenses to a level consistent with the budgeted Net Operating Loss/Profit amount. Manager shall forthwith comply with any such expense reduction requested by the City and the approved budgets for such Fiscal Year shall be modified accordingly.

## **12.5 Receipts and Disbursements**

Manager shall establish and maintain in a bank designated by the City's Chief Financial Officer an operating bank account for the promotion, operation and management of the Golf Course and related facilities in the name of the City, with Manager as agent and with signature authority in such employees of Manager as Manager shall determine. All revenues collected by Manager from the operation of the Golf Course and related facilities shall be deposited into such account and Operating Expenses shall be paid by Manager as agent for the City from such account. All revenues collected by Manager arising from operation of the Golf Course and related facilities are the sole property of the City, held in trust by Manager for the City for application as provided herein. Any amounts remaining in said account upon termination of this Agreement for any reason, after payment of all outstanding Operating Expenses, shall be promptly paid by Manager to the City.

## **ARTICLE 13**

**[Article 13 intentionally deleted]**

## **ARTICLE 14**

**[Article 14 intentionally deleted]**

## **ARTICLE 15**

### **Records and Reports**

15.1 Manager shall prepare and maintain an adequate set of records, in detail and methodology satisfactory to the Director and the City's Chief Financial Officer, documenting all Golf Course and related facilities gross revenues and Operating Expenses pursuant to this Agreement. Such method shall include the keeping of the following records:

- a. Regular books of accounting, such as general ledgers;
- b. Cash receipts and cash disbursements journals, including any supporting and underlying documents such as invoices, vouchers, checks, tickets, bank statements, etc.;
- c. State and Federal income tax returns and sales tax returns and checks and other documents proving payment of sums shown;
- d. Cash register tapes (daily tapes may be separate but shall be retained so that from day to day the sales can be identified) and golf starter sheets.
- e. Annual inventory of equipment, merchandise and other related materials.

15.2 Manager shall record all sales by means of cash registers which publicly display the amount of each sale and automatically issue a customer's pre-numbered receipt or verify the amount recorded on a slip. Said cash registers shall in all cases have locked-in sales totals and transaction counters which continuously accumulate and which cannot, in any case, be reset and, in addition thereto, a tape located within the register on which transaction numbers and sales details are imprinted. Beginning and ending cash register readings shall be made a matter of daily record. In the event of a technical or electrical failure of the cash registers, Manager shall record by hand all collections and issue a sequentially pre-numbered customer's receipt in like manner. Under no circumstances shall Manager conduct sales which are not recorded or for which customer receipts are not issued.

15.3 Any other reporting records that the Director deems necessary for proper reporting of receipts and disbursements.

15.4 If at any time the Director or the City's Chief Financial Officer deems Manager's accounting practices or procedures inadequate or not in accordance with City procedures, Manager shall make requested adjustments to its practices and procedures.

15.5 Manager shall submit monthly to the Director a written report, in a format and in detail satisfactory to the Director, of all Manager's gross revenues from all operations at the Golf Course, and related facilities during the preceding calendar month. Such report shall include, without limitation, a daily breakdown of such gross revenues.

15.6 Preparation of reports with respect to all financial aspects of the Golf Course, such as payroll data, cash receipts, accounts receivable, budget reports and detailed profit center information;

15.7 Maintenance of accounting records and preparation of annual financial statements of the Golf Course and related facilities in accordance with generally accepted accounting principles, consistently applied, including all required footnotes and disclosure.

15.8 **Financial Statement and Miscellaneous Reports**

In addition to such other reports as may be required by this Agreement, Manager shall submit the following reports to City:

15.8.1 **Financial Statement**

Within forty-five (45) days following the last day of each Fiscal Year hereunder, or at any early termination of this Agreement prior to the end of the term, Manager shall submit a financial statement covering all business transacted by it at the Golf Course and related facilities during such period, and all gross revenues, commissions and other income derived therefrom; except for services provided pursuant to the Concession Agreement in Exhibit "C", which shall be governed by the terms thereof. Such financial statement shall be compiled by Manager in accordance with generally accepted accounting practices, and shall be in a format, and in detail, satisfactory to the Director.

#### **15.9 Miscellaneous Reports**

Any other financial or statistical reports reasonably requested by the Director from time to time during the term hereof shall be provided by the Manager, without cost to the City, within a reasonable period of time.

### **ARTICLE 16 Monthly Reporting**

16.1 Manager is required to provide the City with a monthly income statement report. The City will reconcile this report with starter sheets and other source documents to determine if all gross revenues have been included in the report. The report will also be analyzed to determine if expenditures are reasonable based on the submitted operating budget. If an error is found, the City will contact the Manager immediately.

### **ARTICLE 17 Retention of Records**

17.1 Manager shall retain all its books and records of account for the term hereof for not less than two (2) calendar years following the last day of such term. Such books and records of account shall show all Manager's gross receipts, commissions, and other income derived from its operations, pursuant to this Agreement, all deductions therefrom, supporting documents, and all other information required by this Agreement.

17.2 Manager shall retain such books and records of account, and such reports and records as may be required of it, or requested by City, pursuant to this Agreement, at a location within the City and shall keep and maintain the same in accordance with accepted professional accounting principles.

### **ARTICLE 18 Audit and Access to Manager's Records**

18.1 Upon written notification by City, Manager shall make all of its financial records related to the Golf Course and related facilities operations available to City at the business office of Manager including, but not limited to, general ledger, original entry journals, canceled checks, invoices, bank statements, federal and state payroll and income tax filings and financial statements. Manager shall provide such access to such records for City's purposes in verifying information submitted by Manager in any report or financial statement required or requested of Manager pursuant to this Agreement, and for City's purposes in verifying Manager's compliance with the terms of this Agreement, but for no other purpose.

18.2 Further, at any time within two (2) calendar years following the last day of the term hereof, upon written notification to Manager, City may, at its sole cost and expense, inspect, audit, and

copy Manager's books, records of account, and supporting documentation relating to Manager's operations at the Golf Course and related facilities. City, its agents, or auditors may inspect, audit, and copy such books, records of account, and supporting documentation for City's purposes in determining the correctness of the computation of the Operating Surplus as set forth by the annual financial statement submitted by Manager.

18.3 In the event of a discrepancy of more than three percent (3%) between Manager's Gross Receipts, commissions, or other income as established by such inspection and audit, and such Gross Receipts, commission, or other income as reported by Manager pursuant to any financial reports submitted by Manager to City, Manager shall, upon demand, reimburse City for all its costs in connection with such inspection, audit, and copying.

18.4 Manager further agrees to allow City to review its financial records and books on the Golf Course and related facilities.

## **ARTICLE 19**

### **Permits and Licenses**

19.1 Manager shall obtain and maintain in full force and effect throughout the term of this Agreement any and all applicable permits and business licenses which may be required by any law, including administrative regulations and local ordinances, for the conduct of Manager's operations hereunder.

Within ten (10) calendar days following award of this Agreement, Manager shall furnish the Director with copies of all such permits and licenses.

## **ARTICLE 20**

### **Insurance**

20.1. Manager shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the Manager, its agents, representatives or employees. City shall retain the right at any time to review the coverage, form, and amount of the insurance required hereby. If in the opinion of the City's Risk Management Office the insurance provisions in these requirements do not provide adequate protection for City and for members of the public, City may require Manager to obtain insurance sufficient in coverage, form and amount to provide adequate protection. City's requirements shall be reasonable but shall be imposed to assure protection from and against the kind and extent of risks that exist at the time a change in insurance is required.

20.2 At a minimum, Manager shall maintain the following types of insurance coverage at all times throughout the term of this Agreement.

- a. Comprehensive General Liability in the minimum amount of One Million Dollars (\$1,000,000) per occurrence for bodily injury and property damage. This policy must also contain coverage for Center operations, products and contractual liability.
- b. Workers Compensation Insurance as required under the Laws of the State of Florida.
- c. Automobile Insurance shall be provided covering all owned, leased, and hired vehicles and non-ownership liability for not less than the following limits:

Bodily Injury	\$1,000,000 per person
Bodily Injury	\$1,000,000 per accident
Property Damage	\$1,000,000 per accident

The policies of insurance referred to above shall not be subject to cancellation or change except upon at least thirty (30) days prior written notice to the City, and then only subject to the prior written approval of the City Manager or his designee. Prior to the Commencement Date, Manager shall provide City with a Certificate of Insurance for each such policy. ALL POLICIES SHALL NAME THE CITY OF MIAMI BEACH FLORIDA AS AN ADDITIONAL NAMED INSURED. All such policies shall be obtained from companies authorized to do business in the State of Florida with an A.M. Best Insurance Guide (latest edition) rating acceptable to the City's Risk Manager, and any replacement or substitute company shall also be subject to the prior written approval of the City's Risk Manager.

20.3 The Manager will notify its insurance agent without delay of the existence of the Hold Harmless Agreement contained within this Agreement, and furnish a copy of the Hold Harmless Agreement to the insurance agent and carrier.

20.3.1 The Manager will obtain and maintain contractual liability insurance in adequate limits for the sole purpose of protecting the City under the Hold Harmless Agreement from any and all claims arising out of contractual operations.

20.4 All policies issued to cover the insurance requirements herein shall provide full coverage from the first dollar of exposure and shall be made available to the City upon request to the Manager. No deductibles will be allowed in any policies issued on the Agreement unless specific safeguards have been established to assure an adequate fund for payment of deductibles by the insured and approved by the City.

20.5 Compliance by the Manager with the foregoing requirements as to carrying insurance and furnishing copies of the insurance policies shall not relieve the Manager of its liabilities and obligations under any Section or provision of the Agreement.

20.6 Insurance coverage required shall be in force throughout the contract term. Should the Manager fail to provide acceptable evidence of current insurance within seven days of receipt of written notice at any time during the Agreement term, the City shall have the right to consider the Agreement breached and declare a default by the Manager; provided, however, that Manager shall not be deemed in default in the event that any insurance coverage required herein shall either be unavailable or unattainable, or if available, at rates which are commercially prohibited. Manager shall provide City with immediate written notice of its inability to procure any

insurance coverage required herein, and the parties shall use best efforts to procure alternate coverage, or such other solution as they may deem necessary.

20.8 If the Manager does not meet the insurance requirements of the specifications, alternate insurance coverage, satisfactory to the City, may be considered.

20.9 Insurance for the food and beverage and pro shop concessions shall be as provided by the Concession Agreement, attached as Exhibit "C" hereto.

## **ARTICLE 21**

### **21.1 Termination of Agreement**

Except as otherwise provided, if Manager defaults in the performance of any promise, term, condition, or covenant required of it herein, and fails to cure such default within ten (10) calendar days following notice thereof from the Director, this Agreement shall terminate; provided, however, that in the event that the default is not reasonably susceptible to being cured within such ten (10) day period, Manager shall not be considered in default if it shall, within such period, have commenced with due diligence and dispatch to cure, and thereafter completes with dispatch and due diligence the curing of such default but in no event shall such extended cure period exceed ninety (90) days from the date of initial written notice thereof.

### **21.2 Cross Default**

A default by Manager, as Concessionaire, pursuant to the Concession Agreement in Exhibit "C", shall also be considered an event of default under this Agreement.

21.3 If, in the event Manager cannot or does not operate the Golf Course and related facilities in accordance with the terms and conditions stated herein, and the Director terminates this Agreement, the Director may take immediate possession of the Golf Course and related facilities, and operate such facilities in any manner deemed appropriate by the Director for City's benefit and the public's best interests, without any liability therefore to Manager.

### **21.4 City's Right to Terminate Agreement for Convenience**

**NOTWITHSTANDING ANY PROVISION HEREIN TO THE CONTRARY, IF THE CITY DETERMINES, AT ANY TIME DURING ANY RENEWAL TERM HEREUNDER, THAT IT IS IN THE BEST INTEREST OF THE CITY TO TERMINATE THIS AGREEMENT, THE CITY MAY, ACTING THROUGH THE DIRECTOR, TERMINATE THIS AGREEMENT, WITHOUT PENALTY OR CAUSE, IN THE CITY'S SOLE DISCRETION, UPON NINETY (90) DAYS' WRITTEN NOTICE OF INTENT TO TERMINATE GIVEN TO MANAGER. A TERMINATION FOR CONVENIENCE, AS PROVIDED HEREIN, SHALL ALSO TERMINATE FOR CONVENIENCE THE CONCESSION AGREEMENT IN EXHIBIT "C".**

**ARTICLE 22**  
**Golf Course Evaluation Report**

22.1 City and Manager agree that the overall condition and playability of the golf course, the quality of service provided by Manager, and the condition of the Golf Course and related facilities is of primary importance to both parties. As this Agreement specifies the standards of performance deemed necessary for proper maintenance and services, City and Manager will develop a Golf Course Evaluation Report to document Manager's performance pursuant to those standards.

22.2 City Golf Course Evaluation Report will be completed by an authorized representative(s) of the Director after an inspection of the Golf Course by City's representative(s).

22.3 City shall make every reasonable effort to conduct such inspections on a regular basis, and Manager or his authorized representative will be invited to participate in the inspection.

22.4 The Director reserves the right to modify, update, and/or amend the general content and format of the Golf Course Evaluation Report forms in order to provide for a suitable instrument for the documentation of Manager's performance.

**22.5 Director's Inspection**

Manager shall provide golf cart(s) for inspection of the Golf Course by the Director and others as determined by the City. The inspection shall occur not less than annually or more frequently than monthly. The inspection shall also cover, but not be limited to, the pro shop and clubhouse areas and shall include a briefing on the Golf Course operations by Manager.

**ARTICLE 23**  
**Non-assignability**

Except for estate transfers, Manager shall have no right, authority, or power whatsoever to sell, assign, or transfer any right, license, privilege, or duty granted to or imposed upon it hereunder. Such right, license, privilege, and duty are granted and imposed solely and personally to and upon Manager, and any such sale, assignment, or transfer shall result in immediate termination hereof.

**ARTICLE 24**  
**Conflict of Interest**

24.1 Manager shall perform its services under this Agreement and conduct the golf course management and operations contemplated herein, in a manner so as to show no

preference for other golf operations/facilities owned, operated, managed, or otherwise controlled by Manager with regard to its responsibilities pursuant to this Agreement.

24.2 No director or officer of Manager shall have any interest in any concession activities at the Golf Course or its related facilities nor in any contract involving the Golf Course without prior written approval by the Director. Operating Expenses shall not include any profit increment to Manager or its associates. Profit to Manager, if any, is included within the Management Fees specified in Article 11 herein.

## **ARTICLE 25**

### **Authority of the Director**

The Director shall administer this Agreement on behalf of City.

Unless otherwise provided herein, or required by applicable law, the Director shall be vested with all rights, powers, and duties of City hereunder.

With respect to matters hereunder subject to the approval, satisfaction, or discretion of City or the Director, the decision of the Director in such matters shall be final.

## **ARTICLE 26**

### **Consent**

Whenever the consent or approval of either the Mayor or the Miami Beach City Commission, the Director, or other City official is required or authorized hereunder, such consent or approval shall not be unreasonably withheld, unreasonably conditioned, or unreasonably delayed.

## **ARTICLE 27**

### **Time of the Essence**

Time is of the essence in the performance of this Agreement.

## **ARTICLE 28**

### **Independent Contractor**

28.1 It is understood and agreed that Manager (including Manager's employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto. Manager's assigned personnel shall not be entitled to any benefits payable to employees of City. As an independent contractor, Manager hereby indemnifies and holds City harmless

from any and all claims that may be made against City based upon any contention by any third party that an employer-employee relationship exists by reason of this agreement.

28.2 It is further understood and agreed by the parties hereto that Manager in the performance of its obligation hereunder is subject to the control or direction of City as to the designation of tasks to be performed, the results to be accomplished by the services hereunder agreed to be rendered and performed, and not the means, methods, or sequence used by Manager for accomplishing the results.

28.3 If, in the performance of this agreement, any third persons are employed by Manager, such person shall be entirely and exclusively under the direction, supervision, and control of Manager. All terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by Manager.

28.4 It is further understood and agreed that as an independent contractor and not an employee of City, neither the Manager nor Manager's assigned personnel shall have any entitlement as a City employee, right to act on behalf of City in any capacity whatsoever as agent, nor to bind City to any obligation whatsoever.

28.5 It is further understood and agreed that Manager must issue W-2 and 941 Forms for income and employment tax purposes, for all of Manager's assigned personnel under the terms and conditions of this Agreement.

## **ARTICLE 29**

### **Indemnification of City**

29.1 In consideration of a separate and specific consideration of \$10.00 and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Manager shall indemnify, hold harmless and defend the City, its agents, servants and employees from and against any claim, demand or cause of action of whatsoever kind or nature arising out of error, omission, or negligent act of Manager, its subcontractor(s), agents, servants or employees in the performance of services under this Agreement unless such claim, demand or cause of action arises as a result of the City's gross negligence or willful misconduct.

29.2 Subsection 29.1 shall survive for four (4) months following the termination or expiration of this Agreement. Subsection 29.1 shall not apply, however, to any such liability, that arises as a result of the willful misconduct or gross negligence of the City, its agents, servants or employees.

#### **29.4 Subrogation**

The terms of insurance policies referred to in Article 20 shall preclude subrogation claims against Manager, the City and their respective officers, employees and agents.

**29.5 Force Majeure.**

Neither party shall be obligated to perform hereunder and neither party shall be deemed to be in default if performance is prevented by:

- a. fire which renders at least thirty percent (30%) of the Golf Course and related facilities unusable and which is not caused by negligence of Manager;
- b. Earthquake; hurricane; flood; act of God; civil commotion occurring at the Golf Course and related facilities during or in connection with any event; or other matter or condition of like nature; or
- c. Any law, ordinance, rule, regulation or order of any public or military authority stemming from the existence of economic or energy controls, hostilities, or war.

**29.6 Labor Dispute**

In the event of a labor dispute which results in a strike, picket or boycott affecting the Golf Course and related facilities operations described in this Agreement, Manager shall not thereby be deemed to be in default or to have breached any part of this Agreement, unless such dispute shall have been caused by illegal labor practices of Manager and there has been a final determination of such fact which is not cured by Manager within thirty (30) days.

**29.7 Waiver of Loss from Hazards**

The Manager hereby expressly waives all claims against the City for loss or damage sustained by the Manager resulting from fire, water, natural disasters/acts of God (e.g., hurricane, tornado, etc.), civil commotion, riot, or any other Force Majeure contemplated in Subsection 29.5 and Labor Dispute in Subsection 29.6 above, and the Manager hereby expressly waives all rights, claims, and demands against the City and forever releases and discharges the City from all demands, claims, actions and causes of action arising from any of the aforesaid causes.

**ARTICLE 30**  
**Release of Liability**

30.1 City shall not be liable for, and is hereby released from, any and all liability to Manager, or to any person claiming under or through Manager for any loss or damage whatsoever to the property or effects of Manager resulting from the discharge of water, or other substance, from pipes, sprinklers, conduits, containers, appurtenances thereof or fixtures thereto, or from any damage resulting from the discharge or failure of electric current, regardless of cause or origin, except that which is caused by the act of negligence of City, its officers, employees, or agents.

30.2 Further, Manager shall be solely responsible for the safety and security of property, equipment, supplies, merchandise, and commodities used or offered for sale by Manager at the Golf Courses and related facilities. City shall have no liability or responsibility whatsoever, and Manager shall make no claim against City, with respect to such matters.

## **ARTICLE 31**

### **Taxes**

31.1 Manager shall, at its sole cost and expense, pay any and all taxes for which it is responsible, or which may be assessed against it; as of the commencement date of this Agreement, it is believed by the City that, to the best of its knowledge, such taxes include those related to compensation (base and incentive management fees) and the Concession Agreement.

#### **31.2 Right to Contest Taxes**

Manager shall have the right in its own name or to the extent necessary, in City's name, to contest, in good faith and by all appropriate proceedings the amount, applicability or validity of any tax assessment pertaining to the Golf Course and related facilities and its related operations thereon.

In the event Manager initiates such contest, City shall reasonably cooperate with Manager, provided that such contest will not subject any part of City property to forfeiture or loss; and provided, further, that if Manager contests any assessment made by the Assessor of City, such contest shall not be initiated in the name of City, and City shall not be obligated to cooperate therewith.

31.3 If at any time, payment of any tax or assessment becomes necessary to prevent any such forfeiture or loss, Manager shall timely pay such tax or assessment to prevent such forfeiture or loss.

## **ARTICLE 32**

### **Signs**

Manager shall place no sign, emblem, or advertising, of any kind or character, at or on the Golf Courses, clubhouses or other facilities without the prior written approval of the Director.

### **ARTICLE 33**

#### **Notices**

33.1 All notices, consents, waivers, directions, requests or other instruments of communications provided for under this Agreement, shall be deemed properly given if, and only if, delivered personally or sent by registered or certified U.S. mail, postage pre-paid, as follows:

IF TO THE CITY:

Kevin Smith, Director,  
Parks and Recreation  
2100 Washington Avenue  
Miami Beach, Florida 33139

With copies to:

Robert C. Middaugh  
Assistant City Manager  
City of Miami Beach  
1700 Convention Center Drive  
Miami Beach, Florida 33139

IF TO MANAGER:

Johnny La Ponzina, President,  
Professional Course Management II, Ltd.  
10000 Biscayne Boulevard  
Miami Shores, Florida 33138

The Manager and the City may change the above mailing address at any time upon giving the other party written notification. All notices under this Agreement must be in writing.

### **ARTICLE 35**

#### **Notice of Claims and Suit**

35.1 City and Manager shall each give the other prompt and timely written notice of any personal injury or accident claim for in excess of One Thousand and No/00 Dollars (\$1,000.00), and of any lawsuit coming to its knowledge, when either such claim or lawsuit arises out of or if in any way connected with the construction or operations of Manager hereunder, the construction or operation of the Golf Course and related facilities by City which in any way, directly or indirectly, contingently or otherwise, might reasonably affect the parties' relationship under this Agreement.

35.2 Such notice shall be deemed prompt and timely if given within thirty (30) calendar days following the date of receipt of such claim by an officer, agent, or employee of either party, and, if given within ten (10) calendar days following the date of service of process upon either party with respect to any such lawsuit.

**ARTICLE 36**  
**Employee Parking**

Vehicular and equipment parking by Manager, its officers, agents, employees, licensees, suppliers, or subcontractors shall be restricted to such areas at the Golf Course and related facilities as are designated by the Director.

**ARTICLE 37**  
**Applicable Law**

This Agreement shall be interpreted and enforced in accordance with the laws of the State of Florida, and shall be deemed to have been made, and shall be performed, in the State of Florida.

**ARTICLE 38**

This Agreement shall be enforceable in Miami-Dade County, Florida, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for the enforcement of same shall be in Miami-Dade County, Florida. BY ENTERING INTO THIS AGREEMENT, MANAGER AND CITY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF THE AGREEMENT.

**ARTICLE 39**  
**Nondiscrimination Clause**

Manager shall not discriminate in the provision of services because of color, race, creed, national origin, religion, sex, sexual orientation, age, or physical or mental handicap in accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. Section 2000d), the American with Disabilities Act (42 U.S.C. Section 12131 et seq.), and all other applicable laws and regulations requiring no discrimination.

**ARTICLE 40**  
**Equal Opportunity**

The City is an Equal Opportunity Employer. Manager shall comply with Federal, State, and City Equal Employment opportunity requirements.

**40.1 Equal Employment Opportunity**

Manager shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin, in violation of the law. Manager shall take affirmative action, as necessary, to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin, in violation of the law. Such action shall include but not be limited to the following: Employment, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

**40.2 Compliance**

Manager shall comply with all applicable federal, state, and City statutes, ordinances, regulations, directives, and laws and this contract shall be deemed to be executed within the State of Florida and construed with and governed by the laws of the State of Florida.

**ARTICLE 41**  
**No Warranty Re: Golf Course**

City does not warrant that the Golf Course and related facilities will continue to be used as golf course during the term of this Agreement. In the event that such use is terminated, this Agreement will automatically terminate as of the date of such cessation of use and Manager shall neither claim nor entitlement to any damages whatsoever from City.

**ARTICLE 42**  
**Entire Agreement**

This Agreement, together with all exhibits attached hereto, constitutes the entire Agreement between the parties hereto, and all other representations or statements heretofore made, verbal or written, are merged herein, and this Agreement may be amended only in writing, and executed by duly authorized representatives of the parties hereto.

**ARTICLE 43**  
**Nonwaiver of Rights**

No waiver of default by either party of any of the terms, covenants, and conditions hereof to be performed, kept, and observed by the other party shall be construed as, or shall operate as, a waiver of any subsequent default of any of the terms, covenants, or conditions, herein contained, to be performed, kept, and observed by the other party.

**ARTICLE 44**  
**Headlines**

The headings of the articles and sections of this Agreement are inserted only as a matter of convenience and for reference and do not define or limit the scope of intent of any provisions of this Agreement, and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

IN WITNESS WHEREOF, the parties have set their hands and seals the day and year first above written.

ATTEST:

Robert Parcher  
Robert Parcher, City Clerk

THE CITY OF MIAMI BEACH, FLORIDA  
David Derner, Mayor

MANAGER MUST EXECUTE THIS CONTRACT AS INDICATED BELOW. USE CORPORATION OR NONCORPORATION FORMAT, AS APPLICABLE.

MANAGER/PROFESSIONAL COURSE  
MANAGEMENT II, LTD.

WITNESSES:

Alberto Pozzi  
Alberto Pozzi

By:

Johnny LaRozina  
(Signature)  
Johnny LaRozina, President  
(Print Name and Title)

4 day of Nov., 2003

APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION

Michael Dull 10-27-03  
City Attorney Date

**List of Exhibits**

Exhibit "A"

Site Map

Exhibit "B"

Maintenance Standards

Exhibit "C"

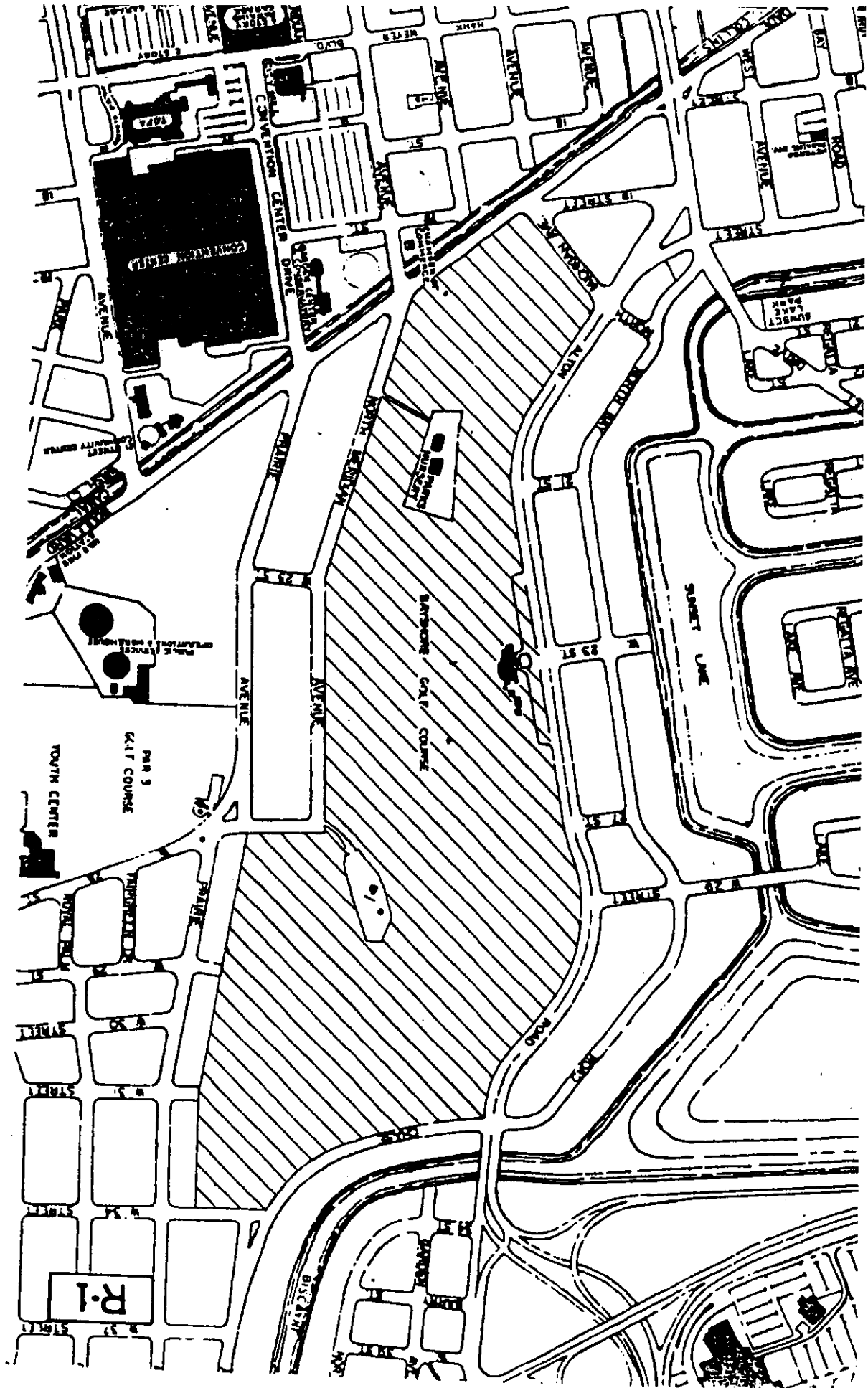
Concession Agreement

**Exhibit "A"**  
**Site Plan**  
**(To be inserted)**

# **SITE MAPS**

## **EXHIBIT - A**

**Exhibit "B"**  
**Maintenance Standards**  
**(To be inserted)**



<b>STRUCTURE:</b>	Caddy Pen 25th & Alton Rd.	2 Comfort Stations 28th & N. Meridian N. Meridian & Dade
<b>DATE OF CONSTRUCTION:</b>	1938	1952
<b>ORIGINAL COST:</b>	\$ 13,277	\$ 4,895 each
<b>MAJOR REHAB:</b>		
<b>DATE:</b>		
<b>COST:</b>	\$	
<b>TYPE CONSTRUCTION:</b>	C.B.S. #3	C.B.S. #3
<b>DIMENSIONS/STORIES:</b>		
<b>CONTENTS VALUE:</b>	\$	

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<b>STRUCTURE:</b>	City Nursery & Maintenance Hdqtrs.
<b>DATE OF CONSTRUCTION:</b>	1968/1969
<b>ORIGINAL COST:</b>	\$ 125,635
<b>MAJOR REHAB:</b>	
<b>DATE:</b>	
<b>COST:</b>	\$
<b>TYPE CONSTRUCTION:</b>	
<b>DIMENSIONS/STORIES:</b>	
<b>CONTENTS VALUE:</b>	\$

**TITLE:** Bayshore Golf Course  
**ADDRESS:** 2301 Alton Road  
**LEGAL DESCRIPTION:** Area known as Bayshore Golf Course  
**SIZE:** Irregular 118.51 acres  
**USE:** Golf Course  
**ADJACENT ZONING:** C-1, RS-4, RS-3, RM-100, PUD  
**YEAR OF ACQUISITION:**  
**DEED RESTRICTIONS:**  
**LEASES:** American Golf Corp. - Management Agreement  
Term expires 9/30/1991 with (3) 5-year extensions  
**TAX FOLIO:** # 3227-00-010  
**ASSESSMENTS - LAND:** \$ 888,825  
**ASSESSMENTS - IMPROVEMENTS:** \$ 1,084,417  
**ASSESSMENT - TOTAL:** \$ 1,973,242

**DESCRIPTION OF IMPROVEMENTS:**

<b>STRUCTURE:</b>	Bayshore Clubhouse	Concession/Shelter 28th (betw. Alton Meridian)
<b>DATE OF CONSTRUCTION:</b>	5/1954-55	11/1957
<b>ORIGINAL COST:</b>	\$ 253,407	\$ 5,405
<b>MAJOR REHABS:</b>	<u>Addn.</u> <u>Reconst.</u>	
DATE:	10/1960 1970	
COST:	\$ 68,027 \$ 15,846	
<b>TYPE CONSTRUCTION:</b>	C.B.S.	C.B.S. #3
<b>DIMENSIONS/STORIES:</b>	14,664 sq. ft.	420 sq. ft.
<b>CONTENTS VALUE:</b>	\$	

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<b>STRUCTURE:</b>	Bayshore Maint. Bldg. 2800 Meridian	Storage Bldg. (old Coffee Shop) 24th Alton Rd.)
<b>DATE OF CONSTRUCTION:</b>	1956	1922
<b>ORIGINAL COST:</b>	\$ 17,653	\$ 20,000
<b>MAJOR REHABS:</b>		1974
DATE:		\$ 4,523
COST:	\$	
<b>TYPE CONSTRUCTION:</b>	C.B.S. #2	C.B.S.
<b>DIMENSIONS/STORIES:</b>		
<b>CONTENTS VALUE:</b>	\$	

Bayshore Golf Course/continued

**INDEX #:** R-1  
**DATE:** 8/31/

**ACORD****CERTIFICATE OF LIABILITY INSURANCE**OP ID T4  
PROFC-1DATE (MM/DD/YY)  
10/16/03**PRODUCER**

Brown & Brown, Inc.  
5900 N. Andrews Ave. #300  
P.O. Box 5727  
Ft. Lauderdale FL 33310-5727  
Phone: 954-776-2222 Fax: 954-776-4446

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

**INSURED**

Professional Course Management  
dba Normandy Shores Golf Course  
dba Miami Beach Golf Club  
dba Bayshore Golf Club  
dba Pembroke Lakes  
10000 Biscayne Blvd.  
Miami Shores FL 33138

**INSURERS AFFORDING COVERAGE**

INSURER A: Fireman's Fund Insurance Co  
INSURER B:  
INSURER C:  
INSURER D:  
INSURER E:

**COVERAGES**

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	<b>GENERAL LIABILITY</b>	MXZ80806092	10/01/03	10/01/04	<b>EACH OCCURRENCE</b> \$ 1,000,000
	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b>				<b>FIRE DAMAGE</b> (Any one fire) \$ 100,000
	<input type="checkbox"/> <b>CLAIMS MADE</b> <input checked="" type="checkbox"/> <b>OCCUR</b>				<b>MED EXP</b> (Any one person) \$ 5,000
	<input checked="" type="checkbox"/> <b>Liquor Liability</b>				<b>PERSONAL &amp; ADV INJURY</b> \$ 1,000,000
	<b>GEN'L AGGREGATE LIMIT APPLIES PER:</b>				<b>GENERAL AGGREGATE</b> \$ 2,000,000
	<input type="checkbox"/> <b>POLICY</b> <input type="checkbox"/> <b>PRO-JECT</b> <input type="checkbox"/> <b>LOC</b>				<b>PRODUCTS - COMP/OP AGG</b> \$ 2,000,000
A	<b>AUTOMOBILE LIABILITY</b>	MXZ80806092	10/01/03	10/01/04	<b>COMBINED SINGLE LIMIT</b> (Ea accident) \$ 1,000,000
	<input checked="" type="checkbox"/> <b>ANY AUTO</b>				<b>BODILY INJURY</b> (Per person) \$
	<input type="checkbox"/> <b>ALL OWNED AUTOS</b>				<b>BODILY INJURY</b> (Per accident) \$
	<input type="checkbox"/> <b>SCHEDULED AUTOS</b>				<b>PROPERTY DAMAGE</b> (Per accident) \$
	<input checked="" type="checkbox"/> <b>HIRED AUTOS</b>				
	<input checked="" type="checkbox"/> <b>NON-OWNED AUTOS</b>				
	<b>GARAGE LIABILITY</b>				<b>AUTO ONLY - EA ACCIDENT</b> \$
	<input type="checkbox"/> <b>ANY AUTO</b>				<b>OTHER THAN EA ACC</b> \$
					<b>AUTO ONLY: AGG</b> \$
A	<b>EXCESS LIABILITY</b>	XYZ00075692103	10/01/03	10/01/04	<b>EACH OCCURRENCE</b> \$ 3,000,000
	<input checked="" type="checkbox"/> <b>OCCUR</b> <input type="checkbox"/> <b>CLAIMS MADE</b>				<b>AGGREGATE</b> \$ 3,000,000
	<input type="checkbox"/> <b>DEDUCTIBLE</b>				\$
	<input checked="" type="checkbox"/> <b>RETENTION</b> \$ -0-				\$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b>				<b>WC STATU-TORY LIMITS</b> <b>OTH-ER</b>
					<b>E.L. EACH ACCIDENT</b> \$
					<b>E.L. DISEASE - EA EMPLOYEE</b> \$
					<b>E.L. DISEASE - POLICY LIMIT</b> \$
A	<b>OTHER</b>	MXZ80806092	10/01/03	10/01/04	<b>Equipment Floater</b>
	<b>Equipment Floater</b>				<b>GolfCarts</b> 536,600

**DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS**

RE: Bayshore Golf Course - 2301 Alton Road, Miami Beach, FL 33140  
Certificate Holder is also known as an Additional Insured with respect to the General Liability Coverage provided for the Bayshore Golf Course

**CERTIFICATE HOLDER**

Y

ADDITIONAL INSURED; INSURER LETTER: A

**CANCELLATION****CITY OF**

City of Miami Beach  
1700 Convention Center Drive  
Miami Beach FL 33139

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE



RESOLUTION NO. 2003-25383

**A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AN OPERATION AND MANAGEMENT AGREEMENT, BY AND BETWEEN THE CITY OF MIAMI BEACH, FLORIDA, AND PROFESSIONAL COURSE MANAGEMENT II, LTD., FOR THE COMPREHENSIVE MANAGEMENT AND OPERATIONS OF THE CITY'S MIAMI BEACH GOLF CLUB, CLUBHOUSE AND RELATED FACILITIES, IN ACCORDANCE WITH REQUEST FOR PROPOSALS (RFP) NO. 125-99/00; SAID AGREEMENT HAVING AN INITIAL TERM OF THREE (3) YEARS, COMMENCING ON OCTOBER 1, 2003, AND EXPIRING SEPTEMBER 30, 2006, WITH AN OPTION TO RENEW FOR AN ADDITIONAL TWO (2) ONE YEAR TERMS, ON A YEAR-TO-YEAR BASIS, AS PROVIDED IN THE AGREEMENT.**

**WHEREAS**, for the past several years the City has been in the process of reconstructing the former Bayshore Golf Course, now known as the Miami Beach Golf Club, and its clubhouse and related facilities, and an integral component of this comprehensive revitalization has been the selection of a new professional golf course management firm to operate the course, as the City's representative when reconstruction was completed; and

**WHEREAS**, in August of 2000 the City initiated a request for proposals process, seeking qualified firms for the comprehensive management and operation of the City's Golf Courses, Clubhouses and Related Facilities (RFP No.125-99/00); and

**WHEREAS**, on November 29, 2000, the Mayor and City Commission accepted the recommendation of the City Manager and authorized the Administration to enter into negotiations with Professional Course Management II, LTD., (PCM), as the top ranked proposer pursuant to RFP No. 125-99/00; and

**WHEREAS**, prior to opening, the Administration entered into an interim professional services agreement with PCM to manage the City's golf courses until completion of said courses; and

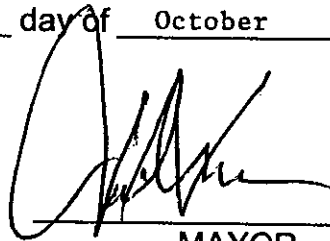
**WHEREAS**, as authorized by the Mayor and City Commission, and as the Miami Beach Golf Club is now substantially complete and functionally operative, the Administration has negotiated the attached Management and Operation Agreement, for the comprehensive management and operation of the Miami Beach Golf Club, and its clubhouse, pro shop, and related facilities, to be entered into between the City and PCM; and

**WHEREAS**, the initial Agreement shall be for a three (3) year term, commencing on October 1, 2003, and concluding on September 30, 2006, with the option to renew for an additional two (2) one year terms, on a year-to-year basis; and

**WHEREAS**, the City of Miami Beach Golf Advisory Board unanimously recommended approval of this Agreement at its meeting of September 2, 2003.

**NOW, THEREFORE, BE IT DULY RESOLVED THAT THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH** hereby approve and authorize the Mayor and City Clerk to execute the attached Management and Operation Agreement, by and between the City of Miami Beach and Professional Course Management II, Ltd., for the comprehensive management and operations of the City's Miami Beach Golf Club, and its clubhouse and related facilities, in accordance with Request For Proposals (RFP) No. 125-99/00; said Agreement shall have an initial term of three (3) years, commencing on October 1, 2003, and expiring September 30, 2006, with an option to renew for an additional two (2) one year terms, on a year-to-year basis, as provided in the Agreement.

**PASSED and ADOPTED** this 15th day of October 2003.

  
\_\_\_\_\_  
MAYOR

**ATTEST:**

  
\_\_\_\_\_  
CITY CLERK

F:\\$ALL\Previous\KEVIN\Commission 2003\Oct.15-03\PCM\_MBGC Mgt. Agmt. Reso.10-6-03.doc

**APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION**

  
\_\_\_\_\_  
City Attorney *RJA* 10-6-03  
Date

**CITY OF MIAMI BEACH  
COMMISSION ITEM SUMMARY**



**Condensed Title:**

A resolution executing a Management Agreement between the City of Miami Beach and Professional Course Management II, Ltd. for the comprehensive management and operations of the Miami Beach Golf Club, clubhouse and related facilities in accordance with request for proposals (RFP) no. 125-99/00 for an initial term of three (3) years, commencing on October 1, 2003, and expiring September 30, 2006, with an option to renew for an additional two (2) one year terms, on a year-to-year basis, as provided in the Agreement.

**Issue:**

Shall the City enter into a Management Agreement with Professional Course Management II, Ltd., for the comprehensive management of the Miami Beach Golf Club and related facilities, including the maintenance of the Par 3 golf course?

**Item Summary/Recommendation:**

The Administration and Professional Course Management II, Ltd., have successfully reached consensus on a management agreement, in a form substantially attached, for the comprehensive management and operations of the Miami Beach golf course, clubhouse and related facilities in accordance with request for proposals (RFP) no. 125-99/00. The Agreement shall have an initial term of three (3) years, commencing on October 1, 2003, and expiring September 30, 2006, with an option to renew for an additional two (2) one year terms, on a year-to-year basis. All revenues collected from the operation of the Golf Course and related facilities shall be deposited into a City account and operating expenses will be paid from revenue generated. The City shall pay the Golf Course Manager during the initial term and Renewal Term, if any, the amounts described in (a) below.

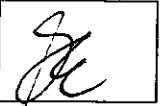
(a) The annual management fee for the performance of the services hereunder with respect to the Fiscal Year for the first year of the initial management term shall be \$137,500 + 9% incentive if earned as stipulated in the agreement with adjustments as follows:

- (i) Year 2 - \$125,000 + 10 % incentive if earned;
- (ii) Year 3 - \$125,000 + 10 % incentive if earned;
- Renewal Term(s) \$125,000 + 10 % incentive if earned.

**Advisory Board Recommendation:**

Recommended for approval by the Miami Beach Golf Advisory Board at its regularly scheduled meeting of September 2, 2003.

**Financial Information:**

Source of Funds:	Amount	Account	Approved
 Finance Dept.	1	\$137,500 + 10% incentive bonus if earned.	Parks and Recreation FY 03/04 General Fund Budget
	2		
	3		
	4		
	<b>Total</b>		

**City Clerk's Office Legislative Tracking:**

**Sign-Offs:**

Department Director	Assistant City Manager	City Manager
		

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AGENDA ITEM

*R7I*

DATE *10-15-03*

# CITY OF MIAMI BEACH

CITY HALL 1700 CONVENTION CENTER DRIVE MIAMI BEACH, FLORIDA 33139  
www.ci.miami-beach.fl.us



## COMMISSION MEMORANDUM

**To:** Mayor David Dermer and  
Members of the City Commission

**Date:** October 15, 2003

**From:** Jorge M. Gonzalez  
City Manager

**Subject:** **A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AN OPERATION AND MANAGEMENT AGREEMENT, BY AND BETWEEN THE CITY OF MIAMI BEACH, FLORIDA, AND PROFESSIONAL COURSE MANAGEMENT II, LTD., FOR THE COMPREHENSIVE MANAGEMENT AND OPERATIONS OF THE CITY'S MIAMI BEACH GOLF CLUB, CLUBHOUSE AND RELATED FACILITIES, IN ACCORDANCE WITH REQUEST FOR PROPOSALS (RFP) NO. 125-99/00; SAID AGREEMENT HAVING AN INITIAL TERM OF THREE (3) YEARS, COMMENCING ON OCTOBER 1, 2003, AND EXPIRING SEPTEMBER 30, 2006, WITH AN OPTION TO RENEW FOR AN ADDITIONAL TWO (2) ONE YEAR TERMS, ON A YEAR-TO-YEAR BASIS, AS PROVIDED IN THE AGREEMENT.**

### ADMINISTRATION RECOMMENDATION:

Adopt the Resolution.

### ANALYSIS

For the past several years the City has been in the process of reconstructing of the Bayshore Golf Course, clubhouse and related facilities. An integral component of this comprehensive revitalization has been the selection of a new professional golf course management firm to operate the course, as the City's representative when reconstruction was completed.

In August of 2000 the City initiated the RFP process for the Comprehensive Management and Operation of the City's Golf Courses, Clubhouses and Related Facilities. On November 29, 2000, the Mayor and City Commission accepted the recommendation of the City Manager and authorized the Administration to enter into negotiations with Professional Course Management II, LTD., (PCM) for these services.

The reconstruction of the Bayshore Golf Course, subsequently renamed the Miami Beach Golf Club, began in December of 2001, and was opened on December 17, 2002.

Prior to opening the Administration entered into an interim professional services agreement with PCM to manage the golf course until the long term agreement was completed.

Attached is the long-term Management Agreement, as proposed in RFP NO. 125-99/00, for the Comprehensive Management and Operation of the City's Miami Beach Golf Course, Clubhouse and Related Facilities to be entered into between the City of Miami Beach and Professional Course Management II, LTD., (PCM).

Below is a listing of the salient points of the proposed agreement:

1. Execution Date: Date of adoption by the City Commission.
2. Commencement Date: October 1, 2003.
3. Services to be provided: Subject to the terms of this Agreement, Golf Course Manager shall have the exclusive right, license, privilege, and duty to operate, manage, maintain, and promote the Golf Course and related facilities in a manner consistent with the City's policies and procedures and the operations of other similar first-class facilities. The scope of services required of the Golf Course Manager under the terms of this Agreement shall include but not be limited to:

Overall Golf Course management in accordance with City golf policy:

- a. Pro shop operations
- b. Starter services
- c. Tee-time reservations
- d. Marshaling Services
- e. Cart rentals and operations
- f. Driving range operations
- g. Food and beverage service
- h. Grounds/buildings and equipment maintenance to City's specifications and manufacturers' specifications.
- i. Clubhouse maintenance and operation
- j. Development of golf training programs
- k. Booking of national and international golf tournaments
- l. Securing, execution and monitoring of agreements with Miami Beach hotels for use of the golf course, if approved by the City.
- m. Collection and accounting of all revenues.
- n. Payment and accounting of all expenses in a timely manner.
- o. Formulation and implementation of operating programs, business plans, and budgets.
- p. Handling of Golf Course and related facilities' personnel including employment, training, and terminations.
- q. Preparation of monthly and annual financial operating statements.

- r. Maintain the Golf Course buildings, equipment, utilities, and all appurtenances in conformity with City's specifications and manufacturers' specifications.
  - s. Plan and carry out advertising and marketing program for the Golf Course and related facilities.
4. **Term:** The initial Agreement shall be for a three (3) year period commencing on October 1, 2003, and conclude on September 30, 2006, with the option to renew for an additional two (2) one year terms, on a year-to-year basis.
5. **Receipts and Disbursements:** The Golf Course Manager shall establish and maintain in a bank designated by the City's Chief Financial Officer an operating bank account for the promotion, operation and management of the Golf Course and related facilities in the name of the City, with Golf Course Manager as agent and with signature authority in such employees of the Golf Course Manager as the Golf Course Manager shall determine. All revenues collected by the Golf Course Manager from the operation of the Golf Course and related facilities shall be deposited into such account and Operating Expenses shall be paid by Golf Course Manager as agent for the City from such account. All revenues collected by Golf Course Manager arising from operation of the Golf Course and related facilities are the sole property of the City, held in trust by Golf Course Manager for the City for application as provided herein. Any amounts remaining in said account upon termination of this Agreement for any reason, after payment of all outstanding Operating Expenses, shall be promptly paid by Golf Course Manager to the City.
6. **Payment to Golf Course Manager:** As consideration to the Golf Course Manager for providing the services herein specified during the initial term and any Renewal Term, the City shall pay the Golf Course Manager during the initial term and Renewal Term, if any, the amounts described in (a) below.
- (a) The annual management fee for the performance of the services hereunder with respect to the Fiscal Year for the first year of the initial management term shall be \$137,500 (the "Management Fee"), which Management Fee shall be adjusted as follows:
- (i) Year 2 - \$125,000;
  - (ii) Year 3 - \$125,000;
  - (iii) Renewal Term Year 1 - \$125,000;
  - (iv) Renewal Term Year 2 - \$125,000.

The Management Fee shall be payable in equal monthly installments due on or before the last day of each month during the Fiscal Year, and the Golf Course Manager shall be entitled to draw such amounts from the account base management fee.

7. Incentive Fee: In addition to the Management Fee, the Golf Course Manager shall be entitled to, and shall receive from the City, an annual incentive fee with respect to each Fiscal Year during the initial term and Renewal Term, if any, as follows:

The Golf Course Manager will be paid the annual incentive fee for the first Fiscal Year (10/1/03 to 9/30/04) of 9% of all gross revenues over \$1,875,000, derived from the Golf Course and related facilities operation. The incentive fee shall increase to 10% for the second Fiscal Year of operations, and 10% for the third Fiscal Year, and each Renewal Term, if any. Gross revenues shall not include gross revenues received by Golf Course Manager as a concessionaire for the food and beverage and pro shop facility (merchandise). Gross revenues will include the 5% concession fee paid by Golf Course Manager to the City for the use of the latter facilities.

Golf Course Manager's annual incentive fee will be earned in full provided the "net operating income before debt service" as shown on the approved annual operating budget equals or exceeds \$800,000 per year. Should the "net operating income before debt service" be less than \$800,000, Golf Course Manager's annual incentive fee shall be reduced proportionately. By example, if the net operating income before debt service is \$720,000 (10% less) then Golf Course Manager's annual incentive fee shall be reduced by 10%.

In arriving at "net operating income before debt service," there shall be deducted from Golf Course and related facilities gross revenues the ordinary operating expenses as set forth in the annual operating budget approved by the City. Extraordinary operating expenses and/or non-budgeted capital improvements shall not be deducted from gross revenues in determining "net operating income before debt service."

8. Food, Beverage and Pro Shop Concessions: The Golf Course Manager shall also operate the food, beverage and pro shop concessions under the attached concession agreement. The Golf Course Manager shall be responsible for all costs related to personnel, products, materials, insurance and other related expenses; collect all revenues and remit to the City five percent (5%) of gross food and beverage and merchandise sales.

Under the management of PCM, the Miami Beach Golf Club is projected to exceed the 2002 - 03 fiscal year revenue estimate of \$2,281,000 by approximately \$375,000 while the operating expenses are forecast to be within the allocated budget. The Miami Beach Golf Club budget, as approved, projected a deficit of approximately \$800,969 which represents debt service for the year. Based on the forecast, the deficit will be reduced by more than 46%. This is a highly commendable achievement considering these results reflect twelve months of operating expenses and only 9½ months of revenue generation, (the Miami Beach Golf Club opened December 17, 2002).

In February the Administration was informed by the Golf Course Architect, Arthur Hills that the Miami Beach Golf Club has been nominated to be included in the Golf Digest magazine's Top 10 New Golf Courses in the United States for 2002. This rigorous analysis is a year long evaluation that will conclude in November with the selection being published in the last annual issue of Golf Digest. To be nominated in itself is a major honor and accomplishment because rarely will Golf Digest consider a reconstructed golf course in this category. In general they will only evaluate new developments in this competition. The fact that they selected the Miami Beach Golf Club as in this category speaks volumes to its quality and playability.

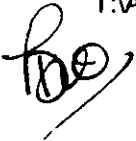
The Miami Beach Golf Club continues to receive positive recognition in various media. Examples include two promotional pieces that recently appeared in golf magazines. The first piece was in Links Golf Magazine with a distribution of over 700,000 and the second in

Florida Golf Central with a distribution of approximately 75,000. In addition, a video segment focusing on the environmental benefits of using paspalum sod on the golf course was taped to be shown on the National Geographic channel.

PCM has worked in partnership with the City through the grow-in and opening of the Miami Beach Golf Club and has successfully demonstrated their ability to manage, operate and maintain the Club to the high standards envisioned by the Commission, Administration or residents and guests when this RFP was issued. Accordingly the Administration recommends that the Mayor and City Commission approve the attached resolution.

JMG:RCM:KS

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**MAINTENANCE CONDITIONING & MINIMUM  
EQUIPMENT NEEDED STANDARDS REPORT**

**EXHIBIT - B**

**CITY OF MIAMI BEACH**  
**BAYSHORE GOLF COURSE**  
**MIAMI BEACH, FLORIDA**

**MAINTENANCE CONDITIONING & MINIMUM**  
**EQUIPMENT NEEDED STANDARDS REPORT**

**MAY, 2000**

**PREPARED FOR:**

**MR. KEVIN SMITH, DIRECTOR OF PARKS AND  
RECREATION  
CITY OF MIAMI BEACH  
PARKS AND RECREATION DEPARTMENT  
2100 WASHINGTON AVENUE  
MIAMI BEACH, FLORIDA 33139**

**PREPARED BY:**

**TERRY BUCHEN GOLF AGRONOMY INTERNATIONAL  
4772 WILLIAMSBURG GLADE  
WILLIAMSBURG, VIRGINIA 23185-2113 USA  
757-253-0900 OFFICE  
757-220-3001 FAX**

**Maintenance Conditioning & Minimum Equipment Needed Standards:**

Please Note: All Equipment listed is for mandatory usage and all quantities listed are the minimum

amounts required to provide the desired Maintenance Conditioning Standards.

**GREENS:**

- ♦ Grass Type: Georgia Certified TifEagle Bermudagrass.
- ♦ Mower Type & Rollers: Six- (6) Walk-Behind Greens Mowers with Whiele Tournament Rollers used  
Year Round. Cleanup Laps Mowed with Two- (2) Walk Behind Greens Mowers with Solid Rollers Year Round, With Roller Scrapers, Year Round.
- ♦ Groomers & How Often: All Six- (6) Walk-Behind Greens Mower Equipped With Groomers. Grooming Required Minimum of Three- (3) Days Per Week Year Round.
- ♦ Mowing Height:
  - ♦ Summer: 1/8 – 1/10 Inches.
  - ♦ Winter: 1/8 – 1/10 Inches.
- ♦ Mowing Directions: Seven- (7).
- ♦ Mowing Frequency:
  - ♦ Summer: Seven- (7) Days Weather Permitting; Double Cut 1-2 Times Per Week.
  - ♦ Winter: Seven- (7) Days Weather Permitting; Double Cut 1-2 Times Per Week.
- ♦ Grass Clipping Disposal & Where: Dispose of in Trash Dumpster.
- ♦ Stimpmeter Reading:
  - ♦ Summer: 9-10 Feet; 9- Foot Minimum Speed.
  - ♦ Winter: 9-10 Feet; 9- Foot Minimum Speed.
- ♦ Aerified:
  - ♦ Aerifier Type & Quantities: Two- (2) Walk-Behind Greens Aerifiers.
  - ♦ How Often: Three- (3) Times Per Year; May, July, September.
  - ♦ Coring Size: ½- Inch Diameter Coring Tines Only.
  - ♦ Aerifier Plug: Physically Remove Aerifier Plugs From Green Surface.
  - ♦ Hydroject: One- (1) Toro Hydroject Aerifier; One- (1) Time Per Month Year Round.
- ♦ Topdressing:

- ◆ Routine Topdressing: One- (1) Time Every Week Year Round; Using Original Greensmix.
- ◆ Fill Aerifier Holes with Topdressing & What Kind: Yes; Using Original Greensmix.
- ◆ Topdressing Equipment & Quantities: Two- (2) Truckster Mounted Topdressing Machines.
- ◆ Drag In Topdressing: Use One- (1) Inch Square Mesh Steel Drag Mat Measuring 6' x 8'.
- ◆ Spiking:
  - ◆ How Often: One- (1) Time Per Month Year Round; Topdress Afterwards.
  - ◆ Type Spiker & Quantity: One- (1) Set Triplex Greens Mower Mounted Spiker Attachments.
- ◆ Verticutting:
  - ◆ How Often: Every Two- (2) Weeks March Through November.
  - ◆ Direction(s): Four- (4).
  - ◆ Type Verticutter & Quantity: One- (1) Set Triplex Greens Mower Mounted Verticut Attachments With Grass Catchers.
- ◆ Brushing:
  - ◆ How Often: As Needed.
  - ◆ Type Brush & Quantity: Six- (6) Brush Attachments Mounted On All Walk Behind Greens Mowers.
- ◆ Tournament Roller:
  - ◆ How Often: Two To Three- (2-3) Times Per Week.
  - ◆ Type & Quantity: Two- (2) Side To Side Tournament Speed Rollers.
- ◆ Growth Retardants:
  - ◆ How Often: Every 3-4 Weeks March Through November Following All Label Directions.
  - ◆ Chemical Used: Primo.
- ◆ Poa Annua Control Measures:
  - ◆ How Often: As Needed By Following All Label Directions.
  - ◆ Chemical Used: Kerb Herbicide.
- ◆ Diseases:
  - ◆ Integrated Pest Management (IPM) Program: Yes.
  - ◆ Preventative Program: As Needed.
  - ◆ Curative Action: As Needed.
  - ◆
- ◆ Weeds:
  - ◆ Program: Post Emergence As Needed.
  - ◆ PreEmergence Herbicides & Program: Not Needed.
- ◆ Nematodes & Program: Preventative & Curative Program As Needed By Following All Label Directions.

- ◆ Mole Crickets & Program: Chipco Choice Curative Program As Needed By Following All Label Directions.
- ◆ Fertilization:
  - ◆ Program: Following All Soil Testing Laboratory Recommendations For All Major & Minor Nutrients.
  - ◆ Fertigation: As Needed.
- ◆ pH:
  - ◆ Liming: As Needed.
  - ◆ Sulfur: As Needed.
- ◆ Soil Testing & Frequency: Four- (4) Times Per Year.
- ◆ Thatch Levels: No More Than ¼- Inches Thick.
- ◆ Watering Practices: Use Probes To Check Soil Moisture; Water Deep & Infrequently Whenever Possible.
  - ◆ Hand Watering: As Needed.
- ◆ Spikeless Golf Shoe Policy: Yes.
  - ◆ When Initiated: At Grand Opening Of Golf Course.
- ◆ Collars:
  - ◆ Grass Type: Georgia Certified Tifway 419- Bermudagrass.
  - ◆ Mowing Height: ½- Inch – Same As Fairways – Year Round.
  - ◆ Width: Thirty- (30) Inches Wide.
  - ◆ Mower Quantity, Type & Rollers: Two- (2) Walk Behind Greens Mowers With Whiele Rollers.
  - ◆ Mowing Frequency: Three- (3) Days Per Week (MWF).
  - ◆ Mowing Direction: Both Directions.
  - ◆ Aerification: Same As Greens.
  - ◆ Topdressing: Same As Greens.
  - ◆ Verticutting: Same As Greens.
  - ◆ Fertility: Same As Greens.
  - ◆ Miscellaneous Maintenance Practices: Check For Proper Width As Needed.
- ◆ Approaches:
  - ◆ Grass Type: Georgia Certified Tifway 419- Bermudagrass.
  - ◆ Mowing Height: ½- Inch – Same As Fairways – Year Round.
  - ◆ How Far In Front Of Green Is Approach Mowed: Varies With Each Golf Hole.
  - ◆ Mower Quantity, Type & Roller: Two- (2) Triplex Greens Mowers With Whiele Front Rollers and Solid Rear Rollers, With Roller Scrapers.
  - ◆ Mowing Frequency: Three- (3) Days Per Week (MWF).
  - ◆ Mowing Direction(s): Four- (4), Cross Cutting One- (1) Time Per Week.

- ◆ Aerification: Same As Fairways.
- ◆ Topdressing: Same As Fairways.
- ◆ Verticutting: Same As Tees.
- ◆ Fertility: Same As Fairways.
- ◆ Miscellaneous Maintenance Practices: Hydroject Aerified As Needed.
- ◆ Hole Locations:
  - ◆ Changed How Often: Seven- (7) Days Per Week Year Round.
  - ◆ Chart or System Used: 9- Position Hole Location Chart For Each Green.
- ◆ Cups:
  - ◆ Type: Metal Only.
  - ◆ Painted & Exchanged How Often: Every Other Week Year Round.
- ◆ Flagsticks:
  - ◆ Height: Eight- (8) Feet.
  - ◆ Diameter: ½- Inch.
  - ◆ Color: Florescent Yellow Tournament Flagstick.
  - ◆ Made Of: Fiberglass.
  - ◆ Ferrule: Notched.
  - ◆ Manufacturer: Par Aide or Standard.
  - ◆ Hole Location System: Red, White & Blue Different Colored Flags Designating Front, Middle & Back Hole Locations, Respectively.
- ◆ Flags:
  - ◆ Color: Red, White and Blue.
  - ◆ Made Of: Nylon.
  - ◆ Logo: Embroidered On One- (1) Side.
- ◆ Overseeding Winter Program: None.

### **TEeing GROUNDS:**

- ◆ Grass Type: Georgia Certified Tifway 419- Bermudagrass.
- ◆ Mower Quantities, Type & Rollers: Two- (2) Triplex Greens Mowers With Whiele Tournament Front Rollers & Solid Rear Rollers, With Roller Scrapers, Year Round.
- ◆ Mowing Height:
  - ◆ Summer: ½- Inch.
  - ◆ Winter: ½- Inch.
- ◆ Mowing Directions: Four- (4), Cross-Cutting One- (1) Time Per Week.
- ◆ Mowing Frequency:

- ◆ Summer: Three- (3) Days Per Week (MWF).
- ◆ Winter: Three- (3) Days Per Week (MWF).
- ◆ Grass Clipping Removal:
  - ◆ Grass Catchers Used: Yes – All Year Round.
- ◆ Aerified:
  - ◆ How Often: Two- (2) Times Per Year During July & September.
  - ◆ Aerifier Tines & Size: 3/4- Inch Diameter Coring Tines Only.
  - ◆ Aerifier Plug: Physically Remove Aerifier Plugs From Tee Surface.
  - ◆ Aerifier Type: Two- (2) Fairway Aerifiers With Two- (2) Inch On Center Aerifier Holes.
- ◆ Topdressing:
  - ◆ How Often: Every Other Week Year Round.
  - ◆ Laser Leveled: One- (1) Time Per Year During Summer Months Only With Straight Sand.
  - ◆ Type: Same Sand Only As Used In Original Greensmix.
  - ◆ Fill Aerifier Holes with Topdressing & What Kind: Yes; Same Sand Only As Used In Original Greensmix.
  - ◆ Topdressing Equipment & Quantities: Two- (2) Truckster Mounted Topdressing Machines.
  - ◆ Drag In Topdressing: Use One- (1) Inch Square Mesh Steel Drag Mat Measuring 6' x 8'.
- ◆ Tee Yardage Plaques Mounted Below Turf Surface:
  - ◆ Edged How Often: Every Other Week Year Round.
- ◆ Spiking:
  - ◆ How Often: One- (1) Time Per Month Year Round; Topdressing Afterwards.
  - ◆ Type Spiker: One- (1) Set Triplex Greens Mower Mounted Spiker Attachments.
- ◆ Verticutting:
  - ◆ How Often: Two- (2) Times Heavily During Summer (June & August); Every Other Week Routine Verticutting Year Round.
  - ◆ Type Verticutter: One- (1) Set Triplex Greens Mower Mounted Verticut Attachments.
- ◆ Soil Added To Divots:
  - ◆ Frequency & Soil Type: Seven- (7) Days Per Week Year Round; Straight Sand-Same Sand Used In Greensmix.
  - ◆ Soil Only Bottles on Golf Carts: Yes; Two- (2) Per Golf Cart.
  - ◆ Soil Only Containers on Par 3's: Yes; Adjacent To Every Set Of Tee Markers.
- ◆ Growth Regulator:
  - ◆ How Often: Every 3-4 Weeks March Through November Following All Label Directions.
  - ◆ Chemical Used: Primo.
- ◆ Diseases:
  - ◆ IPM: Yes.

- ◆ Preventative Program: As Needed.
- ◆ Curative Program: As Needed.
- ◆ Weeds & Program:
  - ◆ Post Emergence Program: As Needed With Proper Herbicides Following All Label Directions As Golf Course Must Be Weed Free Year Round.
  - ◆ PreEmergence Herbicide(s) & Program: Spring and Fall; Rhonstar, Alternating With Dimension, Barricade or Surflan – Following All Label Directions.
- ◆ Poa Annua Control Measures:
  - ◆ How Often: As Needed.
  - ◆ Chemicals Used: Kerb Herbicide Following All Label Directions.
- ◆ Nematodes & Program: Preventative & Curative Program As Needed By Following All Label Directions.
- ◆ Mole Crickets & Program: Chipco Choice As Needed By Following All Label Directions.
- ◆ Fertilization:
  - ◆ Program: Following All Soil Testing Laboratory Recommendations For All Major & Minor Nutrients.
  - ◆ Fertigation: As Needed.
- ◆ pH:
  - ◆ Liming: As Needed.
  - ◆ Sulfur: As Needed.
- ◆ Soil Testing & Frequency: Four- (4) Times Per Year.
- ◆ Thatch Levels: No More Than ½- Inch Thick.
- ◆ Watering Practices: Deep and Infrequently To Promote A Good Root System.
  - ◆ Hand Water: As Needed.
  - ◆ Where Disposed: Trash Dumpster.
- ◆ Tee Markers:
  - ◆ Changed How Often: Seven- (7) Days Per Week Year Round.
- ◆ Overseeding Winter Program: None.

### **FAIRWAYS:**

- ◆ Grass Type: Georgia Certified Tifway 419- Bermudagrass.

- Whole Front Rollers and Rear Solid Rollers, With Roller  
Year Round.**

Directions.

- ◆ Chemical Used: Primo.
- ◆ Diseases:
  - ◆ IPM: Yes.
  - ◆ Preventative Program: As Needed.
  - ◆ Curative Program: As Needed.
- ◆ Weeds:
  - ◆ Program: Post Emergence Herbicides As Needed By Following All Label Directions;  
Golf Course Must Be Completely Weed Free Year Round.
  - ◆ PreEmergence Herbicide Program: Spring and Fall Only; Rhonstar, Alternating With  
Dimension, Barricade or Surflan By Following All Label  
Directions.
- ◆ Nematode Program: Preventative & Curative As Needed By Following All Label Directions.
- ◆ Mole Cricket Program: Chipco Choice Program By Following All Label Directions.
- ◆ Poa Annua Control Measures:
  - ◆ How Often: As Needed By Following All Label Directions.
  - ◆ Chemical Used: Kerb Herbicide.
- ◆ Fertilization:
  - ◆ Program: Following All Soil Testing Laboratory Recommendations For All Major &  
Minor Nutrients.
  - ◆ Fertigation: As Needed.
- ◆ pH:
  - ◆ Liming: As Needed.
  - ◆ Sulfur: As Needed.
- ◆ Soil Testing & Frequency: Four- (4) Times Per Year.
- ◆ Thatch Levels: ¼- Inch Maximum.
- ◆ Watering Practices: Deep and Infrequently To Promote A Good Root System.
  - ◆ Hand Water: As Needed.
- ◆ Overseeding Winter Program: None.
- ◆ Soil Added To Divots:
  - ◆ How Often: Every Other Week During Winter; One- (1) Time Per Month During  
Summer.
  - ◆ Soil Bottles On Golf Carts: Two- (2) Per Each Golf Cart - Soil Only.
- ◆ Drag Dew in Mornings:
  - ◆ Frequency: Any Time Fairways Are Not Mowed, Including Weekends.

- ◆ Sprinkler Head Yardage:
  - ◆ Edging Program: Every Three- (3) Weeks Year Round.
- ◆ Yardage Markers:
  - ◆ Edging Program: Every Three- (3) Weeks Year Round.

## **ROUGHES:**

- ◆ Grass Type: Georgia Certified Tifway 419- Bermudagrass.
- ◆ Mower Types: One- (1) 12- Foot Wide Three- (3) Deck Rotary Mower; Two- (2) Utility Triplex Mowers With Whiele Front Rollers; One- (1) 72-88- Inch Wide Out Front Contour Type Rotary Mower; Five- (5) Flymo Type Rotary Mowers; Five- (5) String Line Trimmers.
- ◆ Mowing Height: 1¼"-1½ ".
- ◆ Mowing Direction: Randomly.
- ◆ Mowing Frequency: One- (1) Time Per Week Minimum – Spot Mow Second Time Each Week As Needed Year Round.
- ◆ Grass Clipping Disposal & Where: None.
- ◆ Aerified:
  - ◆ How Often: Two- (2) Times Per Year.
  - ◆ Aerifier Tines & Size: 3/4- Inch Diameter Coring Tines Only.
  - ◆ Aerifier Plug: Physically Drag Aerifier Plugs Into Roughs Surface And Remove Debris With Vacuum/Sweeper.
  - ◆ Aerifier Type: Two- (2) Fairway Aerifiers With Two- (2) Inch On Center Aerifier Holes.
- ◆ Topdressing:
  - ◆ How Often: None.
- ◆ Spiking:
  - ◆ How Often: One- (1) Time Quarterly Year Round.
  - ◆ Type Spiker: One- (1) Three Point Hitch Or Tow Type Large Area Fairway/Rough Spiker.
- ◆ Verticutting:
  - ◆ How Often: One- (1) Heavy Verticutting In May Every Year Same Time As Fairways.
  - ◆ Type Verti-cutter: One- (1) Set Five Plex Fairway Mower Mounted Verticut Units Or Contract Out.
- ◆ Diseases:

- ◆ IPM: Yes.
- ◆ Preventative Program: As Needed.
- ◆ Curative Program: As Needed.
- ◆ Weeds:
  - ◆ Program: Post Emergence Herbicides As Needed By Following All Label Directions;  
Golf Course Must Be Completely Weed Free Year Round.
  - ◆ PreEmergence Herbicide Program: Spring and Fall Only; Rhonstar, Alternating With  
Dimension, Barricade or Surflan By Following All Label  
Directions.
- ◆ Nematode Program: Preventative & Curative As Needed By Following All Label Directions.
- ◆ Mole Cricket Program: Chipco Choice By Following All Label Directions.
- ◆ Poa Annua Control Measures:
  - ◆ How Often: As Needed By Following All Label Directions.
  - ◆ Chemical Used: Kerb Herbicide.
- ◆ Fertilization:
  - ◆ Program: Following All Soil Testing Laboratory Recommendations For All Major &  
Minor Nutrients.
  - ◆ Fertigation: As Needed.
- ◆ pH:
  - ◆ Liming: As Needed.
  - ◆ Sulfur: As Needed.
- ◆ Soil Testing & Frequency: Four- (4) Times Per Year.
- ◆ Thatch Levels: One- (1) Inch Maximum.
- ◆ Watering Practices: Deep And Infrequently To Promote A Good Root System.
  - ◆ Hand Water: As Needed.
- ◆ Overseeding Winter Program: None.
- ◆ Soil Added To Divots:
  - ◆ How Often: One- (1) Time Per Month Year Round.
  - ◆ Soil Bottles On Golf Carts: Two- (2) Per Each Golf Cart - Soil Only.
- ◆ Sprinkler Head Yardage & Edging Program: Same As Fairways.

### WALK PATHS:

- ◆ Location: Between Front of Championship Tees Connecting Each Tee and Proceeding To The

#### Beginning of Each Fairway.

- ◆ Width: 6-8 Feet Wide.
- ◆ Mower Quantity, Type & Rollers: Same Two- (2) Riding Greens Mowers Used For Tees.
- ◆ Mowing Height: ½- Inch Year Round.
- ◆ Mowing Frequency: Three- (3) Days Per Week (MWF).
- ◆ Mowing Direction: Alternating Back And Forth.
- ◆ All Other Maintenance Practices: Same As Fairways.

#### SHORT ROUGH – INTERMEDIATE CUT OF ROUGH:

- ◆ Location: One Mower Width Around The Entire Fairway And Greens Areas.
- ◆ Width: 6-8 Feet Wide.
- ◆ Mower Quantity, Type & Rollers: Two- (2) Utility Triplex Mowers With Whole Front Rollers.
- ◆ Mowing Height: One- (1) Inch Year Round.
- ◆ Mowing Frequency: Three- (3) Days Per Week (MWF).
- ◆ Mowing Direction: Alternating Clockwise and Counter Clockwise.
- ◆ All Other Maintenance Practices: Same As Roughs.

#### BUNKERS:

- ◆ Bunker Rakes:
  - ◆ Manufacturer: Accuform Tournament Rake.
  - ◆ Average Per Bunker: 3 – Approximately Every Twenty- (20) Feet.
  - ◆ Where Are Bunker Rakes Placed: Outside Of Bunker.
- ◆ Major Edging:
  - ◆ How Often: One- (1) Time Per Month Year Round.
  - ◆ Type Edger: Side Walk Edger Blade On String Line Trimmer Or Reciprocator Type Edging Machine.
- ◆ Routine Edging:
  - ◆ How Often: One- (1) Time Per Week.
  - ◆ Type Edger: Five- (5) String Line Trimmers For Roughs – With Trimming Head Upside Down During Edging.
- ◆ Sand Depths:
  - ◆ Slopes: Two- (2) Inches.
  - ◆ Bottoms: Four- (4) Inches.
  - ◆ How Often Depths Checked: One- (1) Time Per Year Minimum During Summer Months.
  - ◆ When To Add Sand: From May Through October Only.
- ◆ Raking:
  - ◆ Frequency: Seven- (7) Days Per Week Year Round.
  - ◆ Riding Bunker Rake & Quantities: Two- (2) All Wheel Drive Three- (3) Wheeled Bunker Rakes.
  - ◆ Hand Rake Edges: Yes; With Metal Leaf Rakes.
  - ◆ Modification of Riding Bunker Rake: Adjust Teeth As Needed To One- (1) Inch Maximum  
Depth.
  - ◆ 2" Lip Facing Green Only: Yes, So Golfers Do Not Putt Out Of Bunkers.

- ◆ Raked Up To Edge Everywhere Else On Greenside & Fairway Bunkers: Yes.
- ◆ Stones or Foreign Debris: Remove Weekly As Needed Year Round.
- ◆ Weeds & Program: Remove On Weekly Basis Year Round.
- ◆ Turf Surrounding Bunker Type: Georgia Certified Tifway 419 Bermudagrass.
  - ◆ Bunker Faces-How Mowed & Frequency: Flymos & String Line Trimmers; 1- Times Per Week; Spot Mow A Second Time As Needed.
  - ◆ Bunker Surrounds-How Mowed & Frequency: Two- (2) Triplex Utility Rough Mowers; 1-  
Time Per Week; Spot Mowed A Second Time As Needed.

### **DRIVING RANGE TEE:**

- ◆ Grass Type: Georgia Certified Tifway 419- Bermudagrass.
- ◆ Mower Quantities, Type & Rollers: Two- (2) Triplex Greens Mowers With Whiele Tournament Front  
Rollers & Solid Rear Rollers, With Roller Scrapers, Year Round.
- ◆ Mowing Height:
  - ◆ Summer: ½- Inch.
  - ◆ Winter: ½- Inch.
- ◆ Mowing Directions: Four- (4), Cross-Cutting One- (1) Time Per Week.
- ◆ Mowing Frequency:
  - ◆ Summer: Three- (3) Days Per Week (MWF).
  - ◆ Winter: Three- (3) Days Per Week (MWF).
- ◆ Grass Clipping Removal:
  - ◆ Grass Catchers Used: Yes – All Year Round.
  - ◆ Where Disposed: Trash Dumpster.
- ◆ Tee Yardage Plaques Mounted Below Turf Surface:
  - ◆ Edged How Often: Every Other Week Year Round.
- ◆ Aerified:
  - ◆ How Often: Two- (2) Times Per Year July & September.
  - ◆ Aerifier Tines & Size: 3/4- Inch Diameter Coring Tines Only.
  - ◆ Aerifier Plug: Physically Remove Aerifier Plugs From Tee Surface.
  - ◆ Aerifier Type: Two- (2) Fairway Aerifiers With Two- (2) Inch On Center Aerifier Holes.
- ◆ Topdressing:
  - ◆ How Often: Every Other Week Year Round.
  - ◆ Laser Leveled: One- (1) Time Per Year During Summer Months Only.

- ◆ Straight Sand: Same Sand As Used In Original Greensmix.
- ◆ Fill Aerifier Holes with Topdressing & What Kind: Yes; Same Sand As Used In Original Greensmix.
- ◆ Spiking:
  - ◆ How Often: One- (1) Time Per Month Year Round; Topdressing Afterwards.
  - ◆ Type Spiker: One- (1) Set Triplex Greens Mower Mounted Spiker Attachments.
- ◆ Verticutting:
  - ◆ How Often: Two- (2) Times Heavily During Summer (June & August); Every Other Week  
Year Round.
  - ◆ Type Verticutter: One- (1) Set Triplex Greens Mower Verticut Attachments.
- ◆ Soil Added To Divots:
  - ◆ Frequency & Soil Type: Seven- (7) Days Per Week Year Round; Straight Sand-Same Sand Used In Greensmix.
- ◆ Diseases:
  - ◆ IPM: Yes.
  - ◆ Preventative Program: As Needed.
  - ◆ Curative Program: As Needed.
- ◆ Growth Regulator:
  - ◆ How Often: Every 3-4 Weeks March Through November Following All Label Directions.
  - ◆ Chemical Used: Primo.
- ◆ Weeds & Program:
  - ◆ PreEmergence Herbicide(s) & Program: Spring and Fall; Rhonstar, Alternating With Dimension, Barricade or Surflan – Following All Label Directions.
- ◆ Poa Annua Control Measures:
  - ◆ How Often: As Needed Following All Label Directions.
  - ◆ Chemicals Used: Kerb Herbicide.
- ◆ Nematodes & Program: Preventative & Curative Program As Needed By Following All Label Directions.
- ◆ Mole Crickets & Program: Chipco Choice As Needed By Following All Label Directions.
- ◆ Fertilization:
  - ◆ Program: Following All Soil Testing Laboratory Recommendations For All Major & Minor  
Nutrients.
  - ◆ Fertigation: As Needed.
- ◆ pH:
  - ◆ Liming: As Needed.
  - ◆ Sulfur: As Needed.

- ◆ Soil Testing & Frequency: Four- (4) Times Per Year.
- ◆ Thatch Levels: No More Than ½- Inch Thick.
- ◆ Watering Practices: Deep and Infrequently To Promote A Good Root System.
  - ◆ Hand Water: As Needed.
- ◆ Tee Markers:
  - ◆ Changed How Often: Seven- (7) Days Per Week Year Round.
- ◆ Overseeding Winter Program: None.

#### DRIVING RANGE FAIRWAY:

- ◆ Grass Type: Georgia Certified Tifway 419- Bermudagrass.
- ◆ Mower Quantity, Type & Rollers: Three- (3) Five- (5) Plex Medium Weight Fairway Mowers With
 

Whiele Front Rollers and Rear Solid Rollers, With Roller Scrapers,  
Year Round.
- ◆ Mower Used For Cleanup Laps & Frequency Used: Same Mower If No Wear Pattern Exists; Triplex
 

Greens Mower If Wear Pattern Exists Anytime  
Year Round.
- ◆ Mowing Height:
  - ◆ Season: ½- Inch Year Round.
- ◆ Mowing Direction:
  - ◆ Fairways: Four- (4); Cross Cut One- (1) Time Per Week Year Round.
- ◆ Mowing Frequency:
  - ◆ Summer: Three- (3) Days Per Week (MWF).
  - ◆ Winter: Three- (3) Days Per Week (MWF).
- ◆ Grass Clippings: Use Nets On All Three- (3) Fairway Mowers To Drag In Grass Clippings.
  - ◆ Grass Catchers Used: No.
- ◆ Aerified:
  - ◆ How Often: Two- (2) Times Per Year.
  - ◆ Aerifier Tines & Size: 3/4- Inch Diameter Coring Tines Only.
  - ◆ Aerifier Plug: Physically Drag Aerifier Plugs Into Fairway Surface; Blow Off Plugs Onto Edges And Remove With Vacuum/Sweeper.
  - ◆ Aerifier Type: Two- (2) Fairway Aerifiers With Two- (2) Inch On Center Aerifier Holes.
- ◆ Topdressing: None.

- ◆ Growth Regulators:
  - ◆ How Often: Every 3-4 Weeks March Through November Following All Label Directions.
  - ◆ Chemical Used: Primo.
- ◆ Diseases:
  - ◆ IPM: Yes.
  - ◆ Preventative Program: As Needed.
  - ◆ Curative Program: As Needed.
- ◆ Weeds:
  - ◆ Program: Post Emergence Herbicides As Needed; Golf Course Must Be Completely Weed Free Year Round.
  - ◆ PreEmergence Herbicide Program: Spring and Fall Only; Rhonstar, Alternating With Dimension, Barricade or Surflan By Following All Label Directions.
- ◆ Nematode Program: Preventative & Curative As Needed By Following All Label Directions.
- ◆ Mole Cricket Program: Chipco Choice Program By Following All Label Directions.
- ◆ Poa Annua Control Measures: Kerb Herbicide As Needed Following All Label Directions
- ◆ Fertilization:
  - ◆ Program: Following All Soil Testing Laboratory Recommendations For All Major & Minor Nutrients.
  - ◆ Fertigation: As Needed.
- ◆ pH:
  - ◆ Liming: As Needed.
  - ◆ Sulfur: As Needed.
- ◆ Soil Testing & Frequency: Two- (2) Times Per Year.
- ◆ Watering Practices: Deep and Infrequently To Promote A Good Root System.
  - ◆ Hand Water: As Needed.
- ◆ Overseeding Winter Program: None.

#### **DRIVING RANGE ROUGHS:**

- ◆ Grass Type: Georgia Certified Tifway 419- Bermudagrass.
- ◆ Mower Types: One- (1) 12- Foot Wide Three- (3) Deck Rotary Mower; Two- (2) Utility Triplex Mowers With Whole Front Rollers; One- (1) 72-88- Inch Wide Out Front

Contour Type Rotary Mower; Five- (5) Flymo Type Rotary Mowers; Five- (5)  
String  
Line Trimmers.

- ◆ Mowing Height: 1¼"-1½ ".
- ◆ Mowing Direction: Randomly.
- ◆ Mowing Frequency: One- (1) Time Per Week Minimum – Spot Mow Second Time As Needed  
Year  
Round.
- ◆ Grass Clipping Disposal & Where: None.
- ◆ Aerified:
  - ◆ How Often: Two- (2) Times Per Year.
  - ◆ Aerifier Tines & Size: 3/4- Inch Diameter Coring Tines Only.
  - ◆ Aerifier Plug: Physically Drag Aerifier Plugs Into Roughs Surface And Remove Debris  
With  
Vacuum/Sweeper.
  - ◆ Aerifier Type: Two- (2) Fairway Aerifiers With Two- (2) Inch On Center Aerifier Holes.
- ◆ Topdressing:
  - ◆ How Often: None.
- ◆ Diseases:
  - ◆ IPM: Yes.
  - ◆ Preventative Program: As Needed.
  - ◆ Curative Program: As Needed.
- ◆ Weeds:
  - ◆ Program: Post Emergence Herbicides As Needed; Golf Course Must Be Completely  
Weed  
Free Year Round.
  - ◆ PreEmergence Herbicide Program: Spring and Fall Only; Rhonstar, Alternating With  
Dimension, Barricade or Surflan By Following All Label  
Directions.
- ◆ Nematode Program: Curative As Needed.
- ◆ Mole Cricket Program: Chipco Choice By Following All Label Directions.
- ◆ Poa Annua Percentage:
  - ◆ Poa Annua Control Measures: Kerb Herbicide As Needed By Following All Label  
Directions.
- ◆ Fertilization:
  - ◆ Program: Following All Soil Testing Laboratory Recommendations For All Major &  
Minor

#### Nutrients.

- ◆ Fertigation: As Needed.
- ◆ pH:
  - ◆ Liming: As Needed.
  - ◆ Sulfur: As Needed.
- ◆ Soil Testing & Frequency: Two- (2) Times Per Year.
- ◆ Watering Practices: Deep And Infrequently To Promote A Good Root System.
  - ◆ Hand Water: Hoses & Sprinklers & Hand Water With Hoses.
- ◆ Overseeding Winter Program: None.

#### **PRACTICE PUTTING GREEN(S) AND CHIPPING GREEN:**

- ◆ Maintenance Practices: Maintained Exactly Like The Regulation 18- Greens On The Golf Course.
- ◆ Hole Locations: Changed Two To Three- (2-3) Times Per Week.
- ◆ Putting Green Markers, Cups: Nine- (9) Minimum; Metal Only.
- ◆ Chipping Greens Flagsticks: Three- (3) Using Same Specifications As For Regulation 18- Greens.

#### **PRACTICE BUNKERS:**

- ◆ Maintenance Practices: Maintained Exactly Like The Bunkers On The Regulation 18- Holes On The  
Golf Course.

#### **BRIDGES & BULKHEADING:**

- ◆ Bridges & Bulkheading Wooden Surfaces: All Wooden Surfaces Must Be Treated With The Highest  
Quality Rated Wood Preservative Per Consumer Reports  
Magazines Recommendations One- (1) Time Per Year.
- ◆ Separate Walking Surface for Spikeless Golf Shoe Technology? Minimum Three- (3) Foot Wide  
Anti  
Slip Rubberized Surface Required On  
All Bridge Surfaces.

#### **CART PATHS:**

- ◆ **Edged How Often:** One- (1) Time Per Month Year Round.
- ◆ **Sweep Entire Surfaces:** As Needed For Clean Appearance.
- ◆ **Curbing Frequency of Edging:** One- (1) Time Per Month Year Round.
- ◆ **Sealer Used:** If Asphalt Surface, Must Seal All Cart Paths Every Two- (2) Years.
- ◆ **Yardage Information on Cart Paths:** Clean & Paint As Needed For Crisp Appearance.

**DRAINAGE:**

- ◆ **Catch Basins:** Edged Every Three- (3) Weeks Year Round With Bunker Edging Equipment.

**IRRIGATION SYSTEM:**

- ❖ Irrigation Technician: One- (1) Full Time Year Round Employee Who Must Check Each and Every Sprinkler Head That It Is Operating And That It Is Turning Every Other Week Year Round.

**LAKEs:**

- ◆ White Amur Fish: Yes; 50- Fish Per Surface Acre In All Golf Course Lakes Added When Golf Course Opens For Initial Play After Obtaining All Necessary Permits Required.
- ◆ Lake Maintenance Contracted Out: Administered By Golf Course Superintendent & Management Company.
- ◆ Who Is Licensed To Perform Lake Maintenance: Lake Maintenance Company.

### **TURF NURSERIES:**

- ◆ **Maintenance Practices:** Must Be Maintained Exactly Like The Greens, Tees, Fairways and Roughs On  
The Regulation 18- Holes On The Golf Course.

**TREES:**

**Exhibit "C"**  
**Concession Agreement**

**CONCESSION AGREEMENT**  
**BETWEEN**  
**CITY OF MIAMI BEACH, FLORIDA**  
**AND**  
**PROFESSIONAL COURSE MANAGEMENT II, LTD**  
**FOR FOOD AND BEVERAGE AND PRO SHOP MERCHANDISE SALES AT THE**  
**MIAMI BEACH GOLF CLUB**

THIS AGREEMENT, made and executed on this \_\_\_\_ day of October, 2003, by and between the **CITY OF MIAMI BEACH**, a municipal corporation organized and existing under the laws of the State of Florida (hereafter called "City"), and **Professional Course Management II, Ltd**, a Florida limited partnership, with offices at 10000 Biscayne Boulevard, Miami Shores, Florida, 33138 (hereinafter called "Concessionaire").

**WITNESSETH**  
**RECITALS:**

**WHEREAS**, City and Professional Course Management II, Ltd (PCM) are parties to that certain Agreement for Operation and Management of the Miami Beach Golf Club, dated \_\_\_\_\_, for the management and operation of the City's golf course and related facilities, pursuant to Request for Proposals No. 125-99/00 (the Management Agreement); and

**WHEREAS**, pursuant to the aforesated Management Agreement, City has granted PCM, acting as Concessionaire, the exclusive concession for food and beverage and pro shop merchandise sales at the Miami Beach Golf Club (the Golf Course and related facilities); and

**WHEREAS**, Concessionaire assures the City that it has developed the expertise with respect to the successful and efficient management of pro shops and golf course food and beverage operations.

**NOW THEREFORE**, in consideration of good and other valuable consideration the parties hereto agree as follows:

The City grants to Concessionaire, and Concessionaire hereby accepts from the City, the exclusive right to operate and manage the food and beverage service and pro shop merchandise sales (including golf club rentals) at the Golf Course and related facilities, in conformance with the purposes and for the period stated herein, and subject to all the terms and conditions herein contained.

## **Article 1**

### **General Scope of Services**

1.01 Merchandise. Subject to the terms of this Agreement and the Management Agreement, Concessionaire shall have the exclusive right to operate the pro shop merchandise sales concession at the Golf Course and related facilities.

1.01.1 Concessionaire shall maintain such inventory as is deemed necessary by the Director, as said term is defined pursuant to Section 1.01 of the Management Agreement, to service the needs of the golfing public, golf outings and tournament play. Inventory shall include, at a minimum, the following: clothing with the Miami Beach Golf Club logo for men and women; golf shoes; clubs and bags; and accessories such as balls, hats, gloves, tees, etc.

1.01.2 Concessionaire shall offer for sale only goods of premium quality. For such goods, Concessionaire shall charge fair and reasonable prices. Prices shall be set by the Concessionaire and shall be in conformance with the range of prices for the same or similar operations at similar establishments in the South Florida area and its environs, such as Doral, Turnberry or Diplomat golf courses and related facilities. When an item has a suggested retail price pre-marked and established by the manufacturer or distributor, Concessionaire shall not charge the public a price higher than such suggested retail pre-marked price.

1.01.3 City reserves the right to prohibit the sale or rental of any item of merchandise which is deemed objectionable or beyond the scope of this Agreement, as determined by the Director in his sole discretion.

1.01.4 Concessionaire shall at all times post prices for all items offered for sale and all services offered.

1.01.5 Concessionaire shall display and merchandise all items in an attractive manner and insure that goods are properly rotated so as to always present a fresh and appealing appearance.

1.01.6 If, in the sole opinion of the Director, Concessionaire is charging too high a retail or rental price for any permitted item, Concessionaire shall reduce the price to no more than that stipulated by Director. Director shall stipulate price based on that price charged at comparable first class golf facilities in the South Florida area and its environs, such as the Doral, Turnberry and Diplomat golf courses and related facilities.

1.01.7 At the end of the term of this Agreement, or any renewed term, or other termination thereof, City agrees to purchase from Concessionaire Miami Beach Golf Club logoed merchandise at the cost paid by Concessionaire for the product, in an aggregate amount not to exceed \$30,000. Should the value of the inventory being held by the Concessionaire exceed \$30,000 in value the Concessionaire agrees to negotiate with the City for remaining inventory.

1.02 Food and Beverage. Subject to the terms of this Agreement and the Management Agreement, Concessionaire shall have exclusive rights to operate the food and beverage concession at the Golf Course and related facilities.

1.02.1 Concessionaire shall sell food and beverages, including beer, wine and other alcoholic beverages, on the golf course and within the clubhouse restaurant and bar in accordance with the provisions of this Agreement. Concessionaire shall also provide catering services for tournaments, outings and groups using the Golf Course and related facilities. All food and beverage operations and services shall be of first-class quality and provided in a first

class manner, comparable to other first class golf operations in the area such as Doral, Turnberry and Diplomat.

1.02.2 Concessionaire shall maintain and provide the necessary inventory of food and beverage products required to satisfy the public demand therefor. All such products sold or kept for sale by Concessionaire shall be first-class in quality, wholesome and pure, and shall conform to the Federal, State and City food laws, ordinances and regulations in all respects. No adulterated, misbranded or impure articles shall be sold or kept for sale by Concessionaire, and all food and beverage products kept on hand by Concessionaire shall be stored and handled with due regard for sanitation . In the event that the food and beverage products are deemed by the Director to be of less than first-class in quality, Concessionaire may be ordered to, and if so ordered shall, improve the quality of any such food or beverage product kept or offered for sale.

1.02.2 Concessionaire shall meet all requirements and obtain appropriate licenses (liquor, occupational, Health Dept., etc.). Concessionaire shall be solely responsible for the payment of all costs and expenses required to complete the transfer of such licenses and to maintain such licenses for the duration of the term of this Agreement.

1.02.3 Concessionaire shall open for service no less than thirty minutes before the first tee time each and every day and shall close no sooner than thirty minutes after the last golfer has finished play. If the Golf Course is closed for the day or an extended period the Concessionaire may elect to close the food and beverage service for that period, provided Concessionaire shall first notify the Director of same in writing (email is acceptable). The hours of operation may be modified as determined to be in the best interest of the City and Concessionaire, but only upon prior written request of the Concessionaire to the Director, and written approval thereof by the Director.

1.02.4 Concessionaire shall staff the facility in a manner consistent with a first-class operation, as defined in Section 1.02.1. Said cost of staffing and all related costs shall be paid by the Concessionaire.

1.02.5 Concessionaire shall be responsible, at its sole cost, to provide cleaning and sanitation services for the kitchen, bar, and dining room.

## **Article 2**

### **Agreement Term and Renewal Term**

2.01 The initial term of this Agreement shall be for a period of three years, commencing on October 1, 2003 and expiring at midnight on September 30, 2006, unless earlier terminated, as provided herein.

2.02 Provided Concessionaire is not in default under this Agreement or as Manager under the Management Agreement, the City shall have the right, at its sole option and discretion, to extend this Agreement for two successive one year terms (each a renewal term), by giving written notice to Concessionaire of such intention no less than ninety days prior to the expiration of the initial term or an exercised Renewal Term.

2.03 Notwithstanding subsections 2.01 and 2.02, the term of this Agreement shall run concomitantly with the Management Agreement. A termination and/or expiration of this Agreement shall also result in a termination of the Management Agreement.

## **Article 3**

### **Insurance**

3.01 Concessionaire shall procure and maintain at its sole cost throughout the term of this Agreement the following insurance coverage with respect to the operation of the food and beverage and pro shop merchandise sales concessions:

- a. Comprehensive General liability in the minimum amount of one million dollars (\$1,000,000) per occurrence for bodily injury and property damage;
- b. Liquor Liability; and
- c. Workers Compensation as required under the laws of the State of Florida.

3.02 The policies of insurance referred to above shall not be subject to cancellation or change in coverage except upon at least thirty (30) days written notice to City, and then subject to the prior written approval of Director. The Concessionaire shall provide Director with a

Certificate of Insurance for each such policy, which shall name the City of Miami Beach, Florida, as an additional named insured. All such policies shall be obtained from companies authorized to do business in the State of Florida with an A.M. Best's Insurance Guide (latest edition) rating and acceptable to the City's Risk Manager. Any replacement or substitute company shall also be subject to the approval of the City's Risk Manager. Should the Concessionaire fail to obtain, maintain or renew the policies of insurance referred to above, in the required amounts, the City may, at its sole discretion, obtain such insurance, and any sums expended by City in obtaining said insurance, shall be repaid by Concessionaire to City, plus ten percent (10%) of the amount of premiums paid to compensate City for its administrative costs. If the Concessionaire does not repay City's expenditures within fifteen (15) days of demand, the total sum owed shall accrue interest at the rate of twelve percent (12%) until paid, and such failure shall be deemed an event of default hereunder.

#### **Article 4**

##### **Payment to City**

4.01 Concessionaire shall pay City five percent (5%) of the monthly gross revenues for food and beverage and merchandise sales; respectively.

4.02 Payment shall be due on the first day of each month throughout the term of this Agreement.

4.03 Concessionaire shall submit a detailed sales report accompanying its monthly payment, but in any event no later than the tenth day of the following month.

4.04 In addition to the sum set forth in Section 4.01, it is further understood that the required Florida State Sales and Use Tax shall be added to Concessionaire's payments and forwarded to the City as part of said payment.

4.05 In the event payment as provided herein is not received by the City by the fifth day of each respective month, Concessionaire agrees to pay a service charge of ten (10%) percent of the total amount outstanding plus a late fee in the amount of Twenty Five (\$25) Dollars per day until all sums due are received by the City.

## **Article 5 Records**

5.01 Concessionaire shall record all sales by means of cash registers which publicly display the amount of each sale and automatically issue a pre-numbered receipt. Such registers shall have in all cases locked-in sales totals and transaction counters which continuously accumulate and which cannot, in any case, be reset and, in addition thereto, a tape located with in the register on which transaction numbers and sales details are imprinted. Beginning and ending cash register readings shall be made a matter of daily record.

5.02 Concessionaire shall prepare and maintain an adequate set of records according to generally accepted accounting principles, documenting all of Concessionaire's gross revenues which shall include:

- a. Cash register tapes. Daily tapes may be separate but shall be retained so that from day the sales can be identified.
- b. Cash receipt journals.

5.03 If at any time the Director deems the Concessionaire's accounting practices inadequate or not in accordance with generally accepted accounting principles, Concessionaire shall make requested adjustments to its practices and procedures.

5.04 Concessionaire shall retain all its books and records detailing gross revenues for the term thereof for no less than two calendar years following the last day of such term. Such records shall be maintained according to generally accepted accounting principles and shall show Concessionaire's gross receipts and other income derived from its operations pursuant to this Agreement. Concessionaire agrees to make available and give the City full access to any and all records related to this Agreement upon 24 hours written notice from Director and/or such other designee, as Director may deem necessary.

## **Article 6**

### **City's Responsibilities**

6.01 City shall perform the following:

- a. Administer all terms and conditions of this Agreement.
- b. Monitor standards and specifications.
- c. Provide or make provisions for all initial furniture, fixtures and equipment needed to operate the food and beverage and pro shop facilities to include: restaurant and bar tables and chairs, kitchen equipment, pots, pans, small wares, china, silver, glassware, pro shop display fixtures, banquet equipment, office furniture, point of sale system (with sufficient back office capabilities to support the financial reporting requirements of the Agreement), office equipment, telephone equipment, etc. Concessionaire shall be responsible for any and all replacement due to breakage, theft (unless documented by a City Police report) or employee negligence; all paper goods and disposable items such as plastic wares, cups; and costs related to printing of menus, display boards or other promotional materials relating directly to the Concessionaire's operations.
- d. Provide for utilities needed to operate the food and beverage and pro shop facilities including electric, gas, water and sewer, telephone, waste removal and pest control.
- e. Maintenance and repairs of buildings, parking lots, fixtures and equipment.
- f. Capital improvements, as deemed necessary by Director.
- g. Pay rent of real estate taxes, if levied.

## **Article 7**

### **Default and Termination**

7.01 If Concessionaire fails to perform in accordance with any of the terms and conditions of this Agreement, and such default is not cured within ten (10) calendar days after written notice from Director, this Agreement shall terminate; provided, however, that in the

event that the default is not reasonably susceptible to being cured within such ten (10) day period, Manager shall not be considered in default if it shall, within such period, commenced with due diligence and dispatch to cure, and thereafter completes with dispatch and due diligence the curing of such default but in no event shall such extended cure period exceed ninety (90) days from the date of initial written notice thereof.

7.02 Cross Default. A default by the Concessionaire, as Manager, under the Management Agreement, shall also be considered an event of default under this Agreement.

## **Article 8**

### **Termination for Convenience**

If the Management Agreement is terminated for convenience, as provided in Section 21.4 therein, then this Concession Agreement shall also be terminated for convenience.

## **Article 9**

### **Not a Lease**

It is expressly understood and agreed that no part, parcel, building, structure, equipment or space on the Golf Course and related facilities is leased to the Concessionaire; that this Agreement is a concession agreement and not a lease; and that the Concessionaire's right to use the Golf Course and related facilities for the purposes contemplated herein and in the Management Agreement shall continue only so long as the Concessionaire complies with the undertakings, provisions, agreements, stipulations and conditions of this Agreement.

## **Article 10**

### **Alterations, Maintenance and Repair**

10.1 Concessionaire herein accepts any facilities and/or premises to be used for the concession operation contemplated herein, in their "AS IS" condition.

10.2 Concessionaire shall maintain and-operate the Premises in a clean, safe, wholesome, and sanitary condition, free of trash, garbage, or obstructions of any kind, and in compliance with any and all applicable present and future laws, general rules and regulations of any governmental authority in force now or at anytime during the term of this Agreement relating to sanitation, public health, safety, or welfare.

10.3 Concessionaire shall perform acceptable day-to-day housekeeping and maintain and perform all repairs on the kitchen, dining rooms, bar and pro shop that are necessitated as a result of Concessionaire's or its agents' negligence. Manager shall be responsible for all other repairs and maintenance. All such maintenance, repairs and replacements shall be of quality equal to or better than the original in materials and workmanship.

10.4 The Director may, at any time, without notice, enter upon the Golf Course, to determine if repairs, housekeeping and maintenance satisfactory to City are being performed.

#### **Article 11**

##### **Assignment/Sublet**

The Concessionaire may not sublet or assign this Agreement, or any part thereof, without the prior written approval of the Director, which approval shall be given, if at all, at the sole discretion of the Director.

#### **Article 12**

##### **Permits; Licenses; Taxes**

The Concessionaire agrees to obtain and pay for all permits and licenses necessary for the conduct of its business and agrees to comply with all laws governing the responsibility of an employer with respect to persons employed by the Concessionaire. In addition, the Concessionaire shall comply with all rules, regulations and laws of the City; Miami-Dade County; the State of Florida; and the U.S. Government now in force or hereafter to be adopted.

### **Article 13 Inspection**

Concessionaire agrees that its concession operations may be inspected at any time upon reasonable notice by authorized representatives of the City, or by any other State, County, Federal or municipal officer or agency having responsibilities for inspections of such operations and/or facilities. The Concessionaire agrees to undertake immediately the correction of any deficiency cited by such inspectors in the operations, which is properly the responsibility of the Concessionaire pursuant to this Agreement.

### **Article 14 Waiver of Interference**

Concessionaire hereby waives all claims for compensation for loss or damage sustained by reasons of any interference with its concession operation by any public agency or official as a result of their enforcement of any laws or ordinances or of any of the rights reserved to the City herein. Any such interference shall not relieve the Concessionaire from any obligation hereunder.

### **Article 15 Indemnification**

15.1 Concessionaire shall indemnify, hold harmless and defend the City, its agents, servants and employees from and against any claim, demand or cause of action of whatsoever kind or nature arising out of error, omission, or negligent act of the Concessionaire, its agents, servants or employees arising out of or otherwise under this Agreement.

15.2 In addition, the Concessionaire shall indemnify, hold harmless and defend the City, its agents, servants and employees from and against any claim, demand or cause of action of whatever kind or nature arising out of any misconduct of the Concessionaire not included in the paragraph in the subsection above and for which the City, its agents, servants or employees are alleged to be liable. This subsection shall not apply, however, to any such liability as may be the result of the willful misconduct of the City, its agents, servants or employees.

15.3 Subrogation. The terms of insurance policies referred to in Article 3 shall preclude subrogation claims against the Concessionaire, the City and their respective officers, employees and agents.

## **Article 16**

### **No Liens**

Concessionaire agrees that it will not suffer, or through its actions or anyone under its control or supervision, cause to be filed upon the Golf Course and related facilities any lien or encumbrance of any kind. In the event any lien is filed, the Concessionaire agrees to cause such lien to be discharged within ten (10) days therefrom, and in accordance with the applicable law and policy. If this is not accomplished, the City may automatically terminate this Agreement, without further notice to the Concessionaire.

## **Article 17**

### **Concessionaire's Employees and Managers**

The City and the Concessionaire recognize that in the performance of this Agreement, it may be necessary for the Concessionaire to retain employees and/or managers to effectuate and optimize Concessionaire's operations. Any employees, agents, independent contractors, volunteers, and/or other individuals and/or entities retained by the Concessionaire for the purpose(s) set forth herein shall not be deemed to be agents, employees, partners, joint venturers or associates of the City and shall not obtain any rights or benefits under the civil service or pension ordinances of the City or any rights generally afforded classified or unclassified employees of the City. Further, they shall not be deemed entitled to the Florida Worker's Compensation benefits as employees of the City. Additionally, the Concessionaire and any persons employed by it, or volunteers acting under the authority and/or with the permission of Concessionaire, shall never have been convicted of any offense involving moral turpitude or felony. Failure to comply with this provision shall constitute a default of this Agreement. Any criminal activity caused by or knowingly permitted by the Concessionaire shall result in automatic termination of this Agreement and the Management Agreement.

**Article 18**  
**No Improper Use**

Concessionaire will not use, nor suffer or permit any person to use in any manner whatsoever, its concession operations for any improper, immoral or offensive purpose, or for any purpose in violation of any Federal, State, County, or municipal ordinance, rule, order or regulation, or of any governmental rule or regulation now in effect or hereafter enacted or adopted. The Concessionaire shall not use the concession operations for any unlawful purpose and shall comply with all laws, permitting, and licensing requirements now in force or hereafter adopted, applicable to the concession operations contemplated herein. The Concessionaire agrees not to use the concession operations for, or to permit operation of any offensive or dangerous activity, nuisance or anything against public policy. Except as may result from acts of force majeure, as defined in Section 29.5 of the Management Agreement, the Concessionaire agrees that it will not allow the concession operations to become unoccupied or vacant.

**Article 19**  
**No Dangerous Materials**

Concessionaire agrees not to use or permit in the concession operations the storage of illuminating oils, oil lamps, turpentine, gasoline, benzine, naphtha, or other similar substances, or explosives or any kind, or any substance or thing prohibited in the standard policies of fire insurance companies in the State of Florida.

**Article 20**  
**No Claim Against City Officers, Employees, Individuals**

It is expressly understood and agreed by and between the parties hereto that all individuals, employees, officers, and agents of the City are acting in a representative capacity and not for their own benefit; and that neither the Concessionaire nor any occupant shall have any claim against them or any of them as individuals in any event whatsoever in conjunction with any acts or duties which are reasonably related to the performance of their duties.

**Article 21**  
**Notices**

All notices from the City to the Concessionaire shall be deemed duly served if mailed by registered or certified mail to the Concessionaire at the following address:

Johnny La Ponzina, President,  
Professional Course Management II, Ltd.  
10000 Biscayne Boulevard  
Miami Shores, Florida 33138

All notices from the Concessionaire to the City shall be deemed duly served if mailed by registered or certified mail to the City at the following address:

IF TO THE CITY/MANAGER:      Kevin Smith, Director,  
Parks and Recreation  
2100 Washington Avenue  
Miami Beach, Florida 33139

With copies to:                      Robert C. Middaugh  
Assistant City Manager  
City of Miami Beach  
1700 Convention Center Drive  
Miami Beach, Florida 33139

The Concessionaire and the City may change the above mailing addressed at any time upon giving the other party written notification. All notice under this Agreement must be in writing.

**Article 22**  
**No Discrimination**

Concessionaire agrees that there shall be no discrimination as to race, sex, color, creed, national origin, physical handicap, or sexual orientation in the operations referred to by this Agreement; and further, there shall be no discrimination regarding any use, service, maintenance or operation of the concession. All concession premises on the Golf Course and related facilities shall be made available to the public; subject to the right of Concessionaire to establish and enforce reasonable rules and regulations to provide for the safety, orderly operation and security of the said premises.

**Article 23**  
**Venue**

This Agreement shall be enforceable in Miami-Dade County, Florida, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein exclusive venue for the enforcement of same shall lie in Miami-Dade County, Florida. BY ENTERING INTO THIS AGREEMENT, CITY AND CONCESSIONAIRE EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF, THIS AGREEMENT.

IN WITNESS WHEREOF, the parties hereto have caused their names to be signed and their seals to be affixed; all as of this day and year first written above.

Attest:

Robert Paucher  
City Clerk

CITY OF MIAMI BEACH  
David Dermer, Mayor

MANAGER/PROFESSIONAL COURSE  
MANAGEMENT II, LTD.

WITNESSES:

Alberto Pozzi  
Alberto Pozzi

By:

(Signature)  
Johnny LaBonzina, President  
(Print Name and Title)

4 day of Nov, 2003

APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION

City Attorney 10-22-03  
Date

STATE OF FLORIDA                    )  
  )  
COUNTY OF MIAMI-DADE            )       SS:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2003, by David Dermer, Mayor and Robert Parcher, City Clerk, on behalf of the CITY OF MIAMI BEACH, and by \_\_\_\_\_, on behalf of PROFESSIONAL COURSE MANAGEMENT II, LTD, known to me to be the persons described in and who executed the foregoing instrument, and acknowledged to and before me that they executed said instrument for the purposes therein expressed.

WITNESS my hand and official seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

\_\_\_\_\_  
Notary Public, State of Florida at Large  
Commission No.:  
My Commission Expires: